

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

**FORM S-3**  
**REGISTRATION STATEMENT**  
UNDER THE SECURITIES ACT OF 1933

**CROSSFIRST BANKSHARES, INC.**

*(Exact name of registrant as specified in its charter)*

**Kansas**  
*(State or other jurisdiction of  
incorporation or organization)*

**26-3212879**  
*(I.R.S. Employer  
Identification Number)*

**11440 Tomahawk Creek Parkway**  
**Leawood, KS 66211**  
**(913) 901-4516**  
*(Address, including zip code, and telephone number,  
including area code, of registrant's principal executive offices)*

**Amy Abrams**  
**General Counsel and Corporate Secretary**  
**CrossFirst Bankshares, Inc.**

**11440 Tomahawk Creek Parkway**  
**Leawood, KS 66211**  
**(913) 901-4516**  
*(Name, address, including zip code, and telephone number,  
including area code, of agent for service)*

**With copies to:**

**Scott Gootee**  
**Stinson LLP**

**1201 Walnut Street, Suite 2900**  
**Kansas City, MO 64106**  
**(816) 842-8600**

**Approximate date of commencement of proposed sale to the public: From time to time after this registration statement becomes effective.**

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box:

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box:

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer

Small reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of Securities Act.

**The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.**



**The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement of which this prospectus forms a part filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where such offer or sale is not permitted.**

**Subject to completion, dated February 23, 2023**

**PROSPECTUS**

**\$250,000,000**



**CROSSFIRST**  
BANKSHARES, INC.

**Common Stock  
Preferred Stock  
Debt Securities  
Depository Shares  
Warrants  
Purchase Contracts  
Purchase Units  
Subscription Rights  
Units**

We may offer, issue and sell from time to time up to \$250,000,000, together or separately, in one or more offerings, the above-referenced securities. The securities we may offer may be convertible into or exchangeable for other securities. This prospectus describes some of the general terms that may apply to these securities and the general manner in which they may be offered. Each time we offer any securities pursuant to this prospectus, we will provide you with a prospectus supplement that will describe the specific amounts, prices and terms of the securities being offered and the specific manner in which they may be offered. You should read this prospectus, the information incorporated by reference in this prospectus, the accompanying prospectus supplement, including any information incorporated by reference therein, and any applicable free writing prospectus carefully before you invest in the securities described in the applicable prospectus supplement.

Our common stock is listed on the Nasdaq Global Select Market (“Nasdaq”) and trades under the ticker symbol “CFB.”

We may offer and sell these securities to or through one or more underwriters, dealers and agents, directly to purchasers or through a combination of these methods, on a continuous or delayed basis from time to time. See “*Plan of Distribution*.” The names of any underwriters, dealers or agents involved in the distribution of our securities, their compensation and any option they hold to acquire additional securities will be described in the applicable prospectus supplement. Net proceeds from the sale of securities will be set forth in the applicable prospectus supplement.

**Investing in our securities involves certain risks. Before buying our securities, you should carefully consider the risks described under the caption “*Risk Factors*” beginning on page 2 of this prospectus, and in the documents included or incorporated by reference into this prospectus and the accompanying prospectus supplement, including any information incorporated by reference therein.**

**These securities are not deposits, savings accounts or other obligations of any bank or savings association and are not insured or guaranteed by the Federal Deposit Insurance Corporation or any other governmental agency and are subject to investment risks, including the possible loss of the entire amount you invest.**

**None of the U.S. Securities and Exchange Commission nor any other regulatory body has approved or disapproved of these securities or determined if this prospectus is accurate or complete. Any representation to the contrary is a criminal offense.**

**The date of this prospectus is \_\_\_\_\_, 2023.**

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## ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement on Form S-3 that we filed with the U.S. Securities and Exchange Commission (“SEC”), using a “shelf” registration process. Under this shelf registration statement, we may offer and sell from time to time, separately or together, any combination of our common stock, preferred stock, debt securities, depositary shares, warrants, purchase contracts, purchase units, subscription rights and units in one or more offerings at an aggregate offering price of up to \$250,000,000. The preferred stock, debt securities, warrants, purchase contracts, purchase units, subscription rights and units may be convertible into, or exercisable or exchangeable for, our common or preferred stock or other securities issued by us, or debt or equity securities issued by one or more other entities.

This prospectus provides you with a general description of the securities we may offer. Each time we offer and sell securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement may also add, update or change information contained in this prospectus. You should read this prospectus and the applicable prospectus supplement together with the additional information described under the heading “*Where You Can Find More Information.*” We may also prepare free writing prospectuses that describe particular securities. Any free writing prospectus should also be read in connection with this prospectus and any prospectus supplement referred to therein. For purposes of this prospectus, any reference to an applicable prospectus supplement may also refer to a free writing prospectus, unless the context otherwise requires. Unless otherwise indicated or the context otherwise requires, all references in this prospectus to “CrossFirst,” “we,” “our,” “us,” “our company” and “the Company” refer to CrossFirst Bankshares, Inc., a Kansas corporation and the bank holding company for CrossFirst Bank, our principal subsidiary and a Kansas state-chartered bank.

The registration statement of which this prospectus forms a part, including the exhibits to the registration statement, contains additional information about us and the securities offered under this prospectus. The registration statement can be obtained from the SEC’s website, [www.sec.gov](http://www.sec.gov). Copies of information filed by us with the SEC are also available on our website at [investors.crossfirstbankshares.com](http://investors.crossfirstbankshares.com). The reference to our website is not intended to be an active link and the information on, or that can be accessed through, our website is not, and you must not consider the information to be, a part of this prospectus or any other filings we make with the SEC.

**We have not authorized anyone to provide you with information in addition to or different from that contained in this prospectus or any applicable prospectus supplement or free writing prospectus. We take no responsibility for, and can provide no assurance as to the reliability of, any information that others may provide. You should not assume that the information in this prospectus, any applicable prospectus supplement or any free writing prospectus that we have prepared is accurate as of any date other than the date of those documents, and that any information in documents that we have incorporated by reference is accurate only as of the date of such document, regardless of the time of delivery of this prospectus or any prospectus supplement or any sale of a security. Our business, financial condition, results of operations and prospects may have changed since those dates.**

The distribution of this prospectus and any applicable prospectus supplement and the offering of the securities in certain jurisdictions may be restricted by law. Persons who obtain this prospectus and any applicable prospectus supplement should inform themselves about, and observe, any such restrictions. This prospectus and any applicable prospectus supplement do not constitute, and may not be used in connection with, an offer or solicitation by anyone in any jurisdiction in which such offer or solicitation is not permitted or in which the person making such offer or solicitation is not qualified to do so or to any person to whom it is unlawful to make such offer or solicitation.

**WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and current reports, proxy statements and other information with the SEC. Our SEC filings are available to the public on the SEC's website at [www.sec.gov](http://www.sec.gov).

The SEC allows us to “incorporate by reference” into this prospectus the information in documents we file with the SEC, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be a part of this prospectus and should be read with the same care. When we update the information contained in documents that have been incorporated by reference by making future filings with the SEC, the information incorporated by reference into this prospectus is considered to be automatically updated and superseded. In other words, in all cases, if you are considering whether to rely on information contained in this prospectus or information incorporated by reference into this prospectus, you should rely on the information contained in the document that was filed later. We incorporate by reference (other than any information furnished to, rather than filed with, the SEC, unless expressly stated otherwise therein) the documents listed below (File No. 001-39028 unless otherwise stated), which are considered to be a part of this prospectus:

- our Annual Report on Form 10-K for the year ended December 31, 2021, filed with the SEC on [February 28, 2022](#) (including the portions of our Definitive Proxy Statement on Schedule 14A, filed with the SEC on [March 25, 2022](#), incorporated by reference therein);
- our Quarterly Reports on Form 10-Q for the quarter ended March 31, 2022, filed with the SEC on [May 5, 2022](#), for the quarter ended June 30, 2022, filed with the SEC on [August 3, 2022](#), and for the quarter ended September 30, 2022, filed with the SEC on [November 8, 2022](#);
- our Current Reports on Form 8-K filed with the SEC on [March 1, 2022](#), [May 6, 2022](#), [May 10, 2022](#), [June 8, 2022](#) and [February 22, 2023](#); and
- the description of our common stock contained in our Registration Statement on Form S-1 (File No. 333-232704), which was incorporated by reference into our Registration Statement on Form 8-A filed with the SEC pursuant to Section 12(b) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), on [August 9, 2019](#), including any amendment or report filed with the SEC for purposes of updating such description.

All reports and other documents we subsequently file with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act until our offering is completed will also be incorporated by reference into this prospectus and deemed to be part hereof (other than any information furnished to, rather than filed with, the SEC, unless expressly stated otherwise therein). The most recent information that we file with the SEC automatically updates and supersedes older information. The information contained in any such filing will be deemed to be a part of this prospectus commencing on the date on which the document is filed.

Any documents incorporated by reference into this prospectus are available without charge to you on the Internet at [investors.crossfirstbankshares.com](http://investors.crossfirstbankshares.com) or upon written or oral request by contacting our Corporate Secretary at 11440 Tomahawk Creek Parkway, Leawood, Kansas 66211, (913) 901-4516. The reference to our website is not intended to be an active link and the information on, or that can be accessed through, our website is not, and you must not consider the information to be, a part of this prospectus or any other filings we make with the SEC.

**CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS**

Certain statements included or incorporated by reference in this prospectus and each prospectus supplement may not be based on historical facts and are “forward-looking statements” within the meaning of Section 27A of the Securities Act, and Section 21E of the Exchange Act. These forward-looking statements reflect our current views with respect to, among other things, future events and our financial performance. Any statements about our management’s expectations, beliefs, plans, predictions, forecasts, objectives, assumptions or future events or performance are not historical facts and may be forward-looking. These statements are often, but not always, made through the use of words or phrases such as “may,” “might,” “should,” “could,” “predict,” “potential,” “believe,” “expect,” “continue,” “will,” “anticipate,” “seek,” “estimate,” “intend,” “plan,” “strive,” “projection,” “goal,” “target,” “aim,” “would,” “annualized” and “outlook,” or the negative version of those words or other comparable words or phrases of a future or forward-looking nature. These forward-looking statements are not historical facts, and are based on current expectations, estimates and projections about our industry, management’s beliefs and certain assumptions made by management, many of which, by their nature, are inherently uncertain and beyond our control. Accordingly, we caution that any such forward-looking statements are not guarantees of future performance and are subject to risks, assumptions, estimates, and uncertainties that are difficult to predict. Although we believe that the expectations reflected in these forward-looking statements are reasonable as of the date made, actual results may prove to be materially different from the results expressed or implied by the forward-looking statements. Factors that may affect our results are disclosed in “Risk Factors” beginning on page 2 of this prospectus, and in the documents incorporated by reference into this prospectus and included or incorporated by reference into, and in the section titled “Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2021. Some of the risks and uncertainties that may cause our actual results, performance or achievements to differ materially from those expressed include, but are not limited to, the following:

- our ability to effectively execute our expansion strategy and manage our growth, including identifying and consummating suitable mergers and acquisitions, integrating merged and acquired companies and achieving projected synergies;
- uncertain or unfavorable general economic or market conditions, including possible slowing or recessionary economic conditions and continuing or increasing inflation, and other conditions affecting our market areas in Kansas, Missouri, Oklahoma, Texas, Arizona, Colorado and New Mexico, including a decrease in or the volatility of oil and gas prices or agricultural commodity prices within the region;
- changes in the anticipated rate hikes by the Federal Open Market Committee;
- fluctuations in interest rates and the fair value of our investment securities, which could have an adverse effect on our profitability;
- the geographic concentration of our markets in Kansas, Missouri, Oklahoma, Texas, Arizona, Colorado and New Mexico;
- concentrations of loans secured by real estate and energy located in our market areas;
- risks associated with our commercial loan portfolio, including the risk for deterioration in value of the general business assets that secure such loans;
- borrower and depositor concentration risks;
- risks associated with the continued outbreak of COVID-19 and its variants;
- our ability to maintain our reputation;
- our ability to successfully manage our credit risk and the sufficiency of our allowance;
- reinvestment risks associated with a significant portion of our loan portfolio maturing in one year or less;
- our ability to attract, hire and retain qualified management personnel;
- our dependence on our management team, including our ability to retain executive officers and key employees and their client and community relationships;
- competition from banks, credit unions and other financial services providers;

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- our ability to maintain sufficient liquidity and capital;
- system failures, service denials, cyber-attacks and security breaches;
- our ability to maintain effective internal control over financial reporting;
- employee error, fraudulent activity by employees or clients and inaccurate or incomplete information about our clients and counterparties;
- increased capital requirements imposed by banking regulators, which may require us to raise capital at a time when capital is not available on favorable terms or at all;
- costs and effects of litigation, investigations or similar matters to which we may be subject, including any effect on our reputation;
- severe weather, acts of god, acts of war or terrorism;
- compliance with governmental and regulatory requirements, including the Dodd-Frank and Wall Street Consumer Protection Act (“Dodd-Frank Act”) and other regulations relating to banking, consumer protection, securities and tax matters;
- changes in the laws, rules, regulations, interpretations or policies relating to financial institutions, accounting, tax, trade, monetary and fiscal matters, including the policies of the Federal Reserve and as a result of initiatives of the current administration;
- risks associated with our common stock; and
- the other factors that are discussed in the sections entitled “Management's Discussion and Analysis of Financial Condition and Results of Operations” and “Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2021.

The foregoing factors should not be construed as exhaustive and should be read together with the other cautionary statements included or incorporated by reference in this prospectus. If one or more events related to these or other risks or uncertainties materialize, or if our underlying assumptions prove to be incorrect, actual results may differ materially from what we anticipate. You are cautioned not to place undue reliance on forward-looking statements. Further, any forward-looking statement speaks only as of the date on which it is made and we undertake no obligation to update or revise any forward-looking statement to reflect events or circumstances after the date on which the statement is made or to reflect the occurrence of unanticipated events, except as required by law.



## THE COMPANY

CrossFirst is the holding company for CrossFirst Bank (the “Bank”). The Company was initially formed as a limited liability company, CrossFirst Holdings, LLC, on September 1, 2008, to become the holding company for the Bank and converted to a corporation in 2017. The Bank was established as a Kansas state-chartered bank in 2007.

The Company's principal activities are the ownership and management of the Bank. The Bank is primarily engaged in providing a full suite of financial services to businesses, business owners, professionals, and their personal networks through its branch offices located in Kansas, Missouri, Oklahoma, Texas, Arizona, Colorado and New Mexico. Since opening our first branch in 2007, we have grown organically primarily by establishing new branches, attracting new clients and expanding our relationships with existing clients, as well as through three strategic acquisitions. Since inception, our strategy has been to be a trusted partner providing customized financial solutions for our clients, which we believe has driven value for our stockholders. We are committed to a culture of serving our clients and communities in extraordinary ways by providing personalized, relationship-based banking. We believe that success is achieved through establishing and growing the trust of our clients, employees, stockholders, and communities. As of December 31, 2022, we had total assets of \$6.6 billion, total loans, net of the allowance for credit losses, of \$5.3 billion, total deposits of \$5.7 billion, and total stockholders' equity of \$608.6 million.

Our executive offices are located at 11440 Tomahawk Creek Parkway, Leawood, Kansas 66211 and our telephone number is (913) 901-4516. Our website address is [www.crossfirstbank.com](http://www.crossfirstbank.com). Information on our website should not be considered a part of this prospectus.

Additional information about us and our subsidiaries is included in documents incorporated by reference in this prospectus. See “*Where You Can Find More Information.*”

## RISK FACTORS

Investing in securities issued by us involves certain risks. Before you invest in any securities issued by us, in addition to the other information included in, or incorporated by reference into, this prospectus, as well as the information contained in any applicable prospectus supplement, you should carefully consider the risk factors contained in the section titled “Item 1A. Risk Factors” and elsewhere in our Annual Report on Form 10-K for the year ended December 31, 2021, which is incorporated by reference into this prospectus, as updated by our Annual or Quarterly Reports for subsequent fiscal years or fiscal quarters that we file with the SEC and that are so incorporated. See “*Where You Can Find More Information*” for information about how to obtain a copy of these documents. You should also carefully consider the risks and other information that may be contained in, or incorporated by reference into, any prospectus supplement relating to specific offerings of securities. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also materially and adversely affect our business and operations.

**USE OF PROCEEDS**

We intend to use the net proceeds from the sales of the securities in the manner and for the purposes that will be set forth in the applicable prospectus supplement, which may include general corporate purposes.

**SUMMARY OF SECURITIES WE MAY OFFER**

*This prospectus contains summary descriptions of the securities we may offer. These summary descriptions are not meant to be complete descriptions of each security. The applicable prospectus supplement for an offering may add, update or change the terms and conditions of the securities as described in this prospectus. The prospectus supplement will also contain information, where applicable, about material U.S. federal income tax considerations relating to the offered securities, and the securities exchange, if any, on which the offered securities will be listed. The descriptions in this prospectus and the applicable prospectus supplement do not contain all of the information that you may find useful or that may be important to you. You should refer to the provisions of the actual documents whose terms are summarized herein and in the applicable prospectus supplement, because those documents, and not the summaries, define your rights as holders of the relevant securities. For more information, please review the forms of these documents, which will be filed with the SEC and will be available as described under the heading “Where You Can Find More Information” above.*

## DESCRIPTION OF COMMON STOCK

*We may issue, separately or together with, or upon conversion, exercise or exchange of other securities, shares of our common stock as set forth in the applicable prospectus supplement. The following section describes the material features and rights of our common stock, \$0.01 par value per share. The following description of our common stock does not purport to be complete and is subject to, and qualified in its entirety by, our Articles of Incorporation, as amended (“Articles”) and Bylaws (“Bylaws”), each of which is incorporated by reference as an exhibit to the registration statement of which this prospectus forms a part, and to applicable Kansas law, including the Kansas General Corporation Code (“KGCC”). We urge you to read these documents for a more complete understanding of stockholder rights.*

### **General**

The Articles authorize the issuance of up to 205,000,000 shares, consisting of 200,000,000 shares of common stock, par value \$0.01 per share (“Common Stock”), and 5,000,000 shares of preferred stock, par value \$0.01 per share (“Preferred Stock”). The shares of Common Stock currently outstanding are fully paid and nonassessable. As of February 17, 2023, we had issued and outstanding 48,494,877 shares of our Common Stock and no shares of our Preferred Stock. As of February 17, 2023, there were 1,718,206 shares of Common Stock issuable upon the exercise or settlement of equity awards or warrants.

As of February 17, 2023, an aggregate of 2,326,570 shares of Common Stock remain reserved for issuance under our existing equity plans.

Each share of Common Stock has the same rights, privileges and preferences as every other share of Common Stock. The designations and powers, preferences and rights and the qualifications, limitations or restrictions of the Common Stock are described below.

### **Dividend Rights**

To the extent permitted under the KGCC and subject to the rights of any series of Preferred Stock we may issue in the future, each holder of Common Stock participates ratably in dividends, which are payable when and as declared by our board of directors (“Board of Directors”).

### **Voting Rights**

Each holder of Common Stock has the right to vote on matters submitted to a vote of the stockholders; provided, however, that except as otherwise required by law, common stockholders are not entitled to vote on any amendment to the Articles of Incorporation that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled to vote, pursuant to the Articles or pursuant to the KGCC.

Each stockholder is entitled to one vote per share of Common Stock held by each such stockholder, including, without limitation, respecting the election of directors. Subject to the rights of the holders of any series of Preferred Stock we may issue in the future and except as otherwise required by law or the Articles or the Bylaws, matters are generally decided by the affirmative vote of a majority of the votes properly cast for or against such matter. The Board of Directors is currently divided into three classes, as nearly equal in number as possible, designated: Class I, Class II and Class III. Stockholders may not cumulate their votes in the election of directors. Subject to the rights of the holders of any series of Preferred Stock we may issue in the future and except as otherwise required by law or the Articles, directors are elected by a plurality of the voting power present or represented at the applicable meeting and entitled to vote on the election of directors.

Subject to the rights of the holders of any series of Preferred Stock we may issue in the future and except otherwise provided by law or by the Articles, the holders representing a majority of the combined voting power of the capital stock issued and outstanding and entitled to vote at a meeting, present in person or represented by proxy, constitute a quorum at all meetings of the stockholders for the transaction of business.

### **Liquidation Rights**

Upon any liquidation, dissolution or winding up of the Company, holders of the Company's debt securities and lenders with respect to other borrowings will receive distributions of the Company's available assets prior to holders of Common Stock or any series of Preferred Stock of the Company. Upon liquidation, holders of any

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series of Preferred Stock we may issue in the future will generally receive distributions of the Company's available assets prior to holders of Common Stock. After the payment of all liabilities and of the liquidation preferences with respect to any issued and outstanding shares of Preferred Stock, we will distribute our remaining assets to the holders of the Common Stock on a pro rata basis.

### **Other Rights and Preferences**

The Common Stock does not have conversion, preemptive or other rights to subscribe for additional shares of capital stock of any class or series of the Company, whether now or hereafter authorized. In addition, there are no sinking fund or redemption provisions applicable to the Common Stock.

### **Anti-Takeover Considerations and Special Provisions of the Articles, the Bylaws and Kansas Law**

Certain provisions of Kansas law and the Articles and Bylaws could have the effect of delaying or deferring the removal of incumbent directors that a stockholder may consider to be in the stockholder's best interest or delaying, deferring or discouraging another party from acquiring control of us, including delaying, preventing, discouraging or making more difficult unsolicited tender offers or takeover attempts that a stockholder may consider to be in the stockholder's best interest, including those takeover attempts that might result in a premium over the market price for the shares of common stock held by stockholders. These provisions, summarized below, are intended to encourage persons seeking to acquire control of us to first negotiate with the Board of Directors. These provisions may also serve to discourage hostile takeover practices and inadequate takeover bids and have the effect of making it more difficult for third parties to cause the replacement of our current management. We believe that these provisions are beneficial because the negotiation they encourage could result in improved terms of any unsolicited proposal. These provisions include:

#### ***Authorized but Unissued Capital Stock***

We have authorized but unissued shares of Common Stock, and the Board of Directors may authorize the issuance of one or more series of Preferred Stock without stockholder approval. These shares could be used by the Board of Directors to make it more difficult or to discourage an attempt to obtain control of us through a merger, tender offer, proxy contest or otherwise.

#### ***No Stockholder Action by Written Consent***

The Articles provide that, except as otherwise provided by or pursuant to any resolution or resolutions of the Board of Directors providing for the issuance of any series of stock having a preference over the Common Stock as to dividends or upon liquidation, stockholder action can be taken only at a duly called meeting of stockholders of the Company and may not be effected by any consent in writing by stockholders.

#### ***Classified Board***

Holders of the Preferred Stock that we may issue in the future may have the right to elect members of the Board of Directors. The Board of Directors is currently divided into three classes, as nearly equal in number as possible, designated: Class I, Class II and Class III. The Articles require that in the event of any increase or decrease in the number of our directors, the number of directors in each class be apportioned as nearly equal as possible. Any decrease in number of directors does not shorten the term of any incumbent director. Each director generally serves for a term ending on the date of the third annual meeting following the annual meeting at which such director was elected (subject to shortened terms in the case of directors in office prior to our conversion to a corporation on December 31, 2017), provided, that each initial Class I director serves for a term ending on the date of the first annual meeting following the annual meeting at which such director was elected, each initial Class II director serves for a term ending on the date of the second annual meeting following the annual meeting at which such director was elected and each initial Class III director serves for a term ending on the date of the third annual meeting following the annual meeting at which such director was elected and that the term of each director will continue until the election and qualification of a successor and be subject to such director's earlier death, resignation or removal. A third party may be discouraged from making a tender offer or otherwise attempting to obtain control of us as it is more difficult and time consuming for stockholders to replace a majority of directors on a classified board.

***Limitation on Right to Call a Special Meeting of Stockholders***

The Articles and Bylaws provide that, except as otherwise required by the KGCC or as may be granted to the holders of any series of Preferred Stock, special meetings of stockholders may be called only by either the Chief Executive Officer of the Company or by at least as many directors as would be a majority of our directors if there are no vacancies on the Board of Directors.

***Advance Notice Provisions***

The Articles and Bylaws establish advance notice procedures with regard to stockholder proposals to nominate directors or bring business at annual meetings of stockholders. Generally, these procedures provide that notice of a stockholder proposal or director nomination must be received by our Secretary not less than 90 days nor more than 120 days prior to the first anniversary of the preceding year's annual meeting of stockholders. The notice must also meet certain form and content requirements specified in the Bylaws. These requirements and procedures may preclude stockholders from nominating directors or bringing business at annual meetings.

***Filling of Board Vacancies***

Any vacancy occurring and newly created directorships resulting from any increase in the authorized number of directors in the Board of Directors may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director and may not be filled by the stockholders. A director elected to fill a vacancy or a newly created directorship holds office until the next elections for the class of directors for which such director has been chosen, subject to the election and qualification of a successor and to such director's earlier death, resignation or removal.

***Charter Amendments***

Certain provisions of the Articles with respect to the Board of Directors, meetings of stockholders, limitation of director liability, indemnification and advancement of expenses and amendments to the Articles and Bylaws may be amended or repealed only with the affirmative vote of the holders of at least two-thirds of the capital stock of the Company entitled to vote generally in an election of directors, voting together as a single class. Accordingly, satisfaction of heightened voting standards would be required to amend the Articles, which could have the effect of delaying, deferring or discouraging the acquisition of control of us.

***Adoption, Amendment and Repeal of the Bylaws***

The Articles authorize the Board of Directors to make, amend and repeal the Bylaws of the Company and our stockholders may only make, amend or repeal the Bylaws of the Company by the affirmative vote of two-thirds of the capital stock of the Company entitled to vote generally in an election of directors, voting together as a single class. Accordingly, the Board of Directors could take action to amend the Bylaws in a manner that could have the effect of delaying, deferring or discouraging another party from acquiring control of us.

***Business Combinations with Certain Persons***

We are subject to Section 17-6427 of the KGCC, which provides that, subject to certain exceptions, a Kansas corporation such as us may not engage in certain business combinations, including mergers, consolidations and asset sales, with a person, who is an "interested stockholder" (generally defined as the holder of 15% or more of the corporation's outstanding voting stock) for a period of three years following the date such person became an interested stockholder, unless (i) prior to such date, the Board of Directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder; (ii) upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced (excluding for purposes of determining the amount of voting stock outstanding certain shares owned by persons who are both officers and directors and employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer); or (iii) on or subsequent to such date, the business combination is approved by the Board of Directors and authorized at an annual or special meeting of

stockholders (and not by written consent) by the affirmative vote of at least 66 2/3% of the outstanding voting stock which is not owned by the interested stockholder. This law may have the effect of prohibiting a business combination involving us, even if such event would be beneficial to our stockholders.

#### ***Control Share Acquisition Statute***

We are also subject to Section 17-1286 et seq. of the KGCC, which provides that, subject to certain exceptions, any person or group must obtain stockholder approval before acquiring any share of stock of a Kansas corporation such as us if, after the acquisition, that person or group would trigger a specified level of voting power, beginning at 20%, as set forth in the statute. If the acquiring person fails to obtain such stockholder approval, the acquired shares lose their voting rights. These voting rights may be retained or restored only if the statutory disclosure requirements are met and the approval of both a majority of the outstanding voting stock and a majority of the outstanding voting stock excluding “interested shares” (generally, shares owned by the acquiring person or group, the corporation’s directors who are also its employees, and the corporation’s officers) is secured.

#### ***Removal of Directors***

Except for additional directors elected by the holders of a series of Preferred Stock we may issue in the future entitling such holders to elect directors, any director or the entire Board of Directors may be removed from office only for cause and only by the affirmative vote of at least a majority of the total voting power of the outstanding shares of the capital stock of the Company entitled to vote in any annual election of directors or class of directors, voting together as a single class.

#### ***Elimination of Liability and Indemnification***

The Articles eliminate a director’s liability to us and our stockholders for monetary damages for breach of a fiduciary duty as a director, except in connection with (i) any breach of the director’s duty of loyalty to us or our stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) certain transactions under Section 17-6424 of the KGCC (relating to liability for unauthorized acquisitions or redemptions of, or payment of dividends on, capital stock), or (iv) for any transaction from which the director derived an improper personal benefit.

The Articles and Bylaws provide that we will indemnify each of our officers and directors to the fullest extent permitted by applicable law and that any modification or repeal of the Articles or Bylaws will not adversely affect this indemnification right of our officers and directors with respect to any act or omission occurring prior to such modification or repeal. Our Articles provide for advancement of expenses to any person who is or was an officer or director to the fullest extent permitted by applicable law except for certain claims brought by any such indemnified party and the Bylaws further provide that any expenses (including attorneys’ fees) actually and reasonably incurred by our officers and directors in connection with their defense of any indemnifiable proceeding or the enforcement of their indemnification rights will be paid by us in advance of the disposition of such action upon receipt of an undertaking by or on behalf of the officer or director to repay such amount if it is ultimately determined that such officer or director was not entitled to be indemnified.

The Bylaws also provide that the indemnification rights set forth in the Bylaws are not exclusive of other indemnification rights to which an indemnified party may be entitled under any statute, provision in the Articles of Incorporation or Bylaws, any agreement, the vote of stockholders or disinterested directors, policy of insurance or otherwise, both as to action in their capacity and as to action in another capacity while holding their respective offices, and shall not limit in any way any right which the Company may have to provide additional indemnification with respect to the same or different persons or classes of person. In this regard, we have entered into indemnification agreements with each of our current directors and officers, and we anticipate that we will enter into indemnification agreements with each of our future directors and officers, that provide these individuals with a contractual right to indemnification from us to the fullest extent permitted under Kansas law against any liability that may arise by reason of their service to us, and to the advancement of expenses incurred as a result of any proceeding against them as to which they could be indemnified. Our Bylaws further authorize us to purchase and maintain insurance on behalf of our officers and directors and we have obtained insurance to cover such individuals for certain liabilities.



***Kansas and Federal Banking Law***

Under the Kansas Banking Code, the following transactions, among others, require application to and the prior written approval of the Office of the State Bank Commissioner of Kansas: (i) the acquisition of control of any Kansas state-chartered bank, (ii) the merger or consolidation of any Kansas state-chartered bank, and (iii) the acquisition of the assets of, or the assumption of the liability to pay any deposit made in, any Kansas-state chartered bank. For purposes of this law, “control” means the power to: (i) vote 25% or more of any class of voting shares, (ii) direct, in any manner, the election of a majority of the directors or (iii) direct or exercise a controlling influence over the management or policies.

The Bank Holding Company Act of 1956, as amended, generally prohibits any corporation that is not engaged in financial activities and activities that are permissible for a bank holding company or a financial holding company from acquiring control of the Corporation. For purposes of this law, “control” generally means ownership of 25% or more of the voting stock, controlling in any manner the election of a majority of the directors or other exercise of a controlling influence. In addition, any existing bank holding company would need the prior approval of the Federal Reserve before acquiring 5% or more of any class of our voting securities. Between 5% and 25% ownership, together with the existence of certain other factors, may give rise to control under rebuttable presumptions established by the Federal Reserve. The Change in Bank Control Act of 1978, as amended, prohibits a person or group of persons from acquiring control of a bank holding company or a bank unless the Federal Reserve and the Federal Deposit Insurance Corporation (“FDIC”), as applicable, has been notified and has not objected to the transaction. Under a rebuttable presumption established by the Federal Reserve and the FDIC, the acquisition of 10% or more of a class of voting stock of a bank holding company or a bank with a class of securities registered under Section 12 of the Exchange Act, such as the Company, could constitute acquisition of control of the bank holding company.

The foregoing provisions of Kansas and federal law could make it more difficult for a third party to acquire our wholly-owned Bank subsidiary or a majority of our outstanding voting stock, by discouraging a hostile bid, or delaying, preventing or deterring a merger, acquisition or tender offer in which our stockholders could receive a premium for their shares, or effect a proxy contest for control of the Company or other changes in our management.

**Transfer Agent**

The Company's transfer agent is Broadridge Corporate Issuer Solutions, Inc.

**Listing**

The Common Stock is traded on the Nasdaq Global Select Market under the trading symbol “CFB.”

## DESCRIPTION OF PREFERRED STOCK

*The following section describes the general terms of the Preferred Stock that we may issue. The specific terms of any series of Preferred Stock will be described in the prospectus supplement relating to that series of Preferred Stock. The terms of any series of Preferred Stock may differ from the terms described below. Certain provisions of our Preferred Stock described below and in any prospectus supplement are not complete. The following description of our Preferred Stock does not purport to be complete and is subject to, and qualified in its entirety by, our Articles and Bylaws, each of which is incorporated by reference as an exhibit to the registration statement of which this prospectus forms a part, and to applicable Kansas law, including the KGCC. We urge you to read these documents for a more complete understanding of stockholder rights.*

### General

The Articles authorize our Board of Directors to establish one or more series of Preferred Stock from time to time. Unless required by law or any stock exchange, up to 5,000,000 authorized but unissued shares of Preferred Stock will be available for issuance without further action by our stockholders. Our Board of Directors is authorized to divide the Preferred Stock into series and, with respect to each series, to fix and determine the designation, terms, preferences, limitations and relative rights thereof, including dividend rights, dividend rates, conversion rights, voting rights, redemption rights and terms, liquidation preferences, sinking fund provisions and the number of shares constituting the series. Without shareholder approval, we could issue Preferred Stock that could impede or discourage an acquisition attempt or other transaction that some, or a majority, of our stockholders may believe is in their best interests or in which they may receive a premium for their Common Stock over the market price of the Common Stock. While the terms of Preferred Stock may vary from series to series, holders of our Common Stock should assume that all shares of Preferred Stock will be senior to our Common Stock in respect of distributions and on liquidation.

The prospectus supplement relating to a particular series of Preferred Stock will contain a description of the specific terms of that series, including, as applicable:

- the title, designation, number of shares and stated or liquidation value of the Preferred Stock ;
- the dividend amount or rate or method of calculation, the payment dates for dividends and the place or places where the dividends will be paid, whether dividends will be cumulative or noncumulative, and, if cumulative, the dates from which dividends will begin to accrue;
- any conversion or exchange rights;
- whether the Preferred Stock will be subject to redemption and the redemption price and other terms and conditions relative to the redemption rights;
- any liquidation rights;
- any sinking fund provisions;
- any voting rights;
- the exchange or market, if any, where the Preferred Stock will be listed or traded; and
- any other rights, preferences, privileges, limitations and restrictions that are not inconsistent with the terms of the Articles.

Upon the issuance and payment for shares of Preferred Stock, the shares will be fully paid and nonassessable. Except as otherwise may be specified in the prospectus supplement relating to a particular series of Preferred Stock, holders of Preferred Stock will not have any preemptive or subscription rights to acquire any class or series of our capital stock.

As stated above in the “*Description of Common Stock*”, the Board of Directors may authorize the issuance of one or more series of Preferred Stock without stockholder approval. These shares could be used by the Board of Directors to make it more difficult or to discourage an attempt to obtain control of us through a merger, tender offer, proxy contest or otherwise. Shares of the preferred stock may also be sold to third parties that indicate that they would support the Board of Directors in opposing a hostile takeover bid. The availability of the Preferred Stock could have the effect of delaying a change of control and of increasing the consideration ultimately paid to our stockholders. The Board of Directors may authorize the issuance of Preferred Stock for capital-raising

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activities, acquisitions, joint ventures or other corporate purposes that have the effect of making an acquisition of the Company more difficult or costly, as could also be the case if the Board of Directors were to issue additional common stock for such purposes. See “*Anti-Takeover Considerations and Special Provisions of the Articles, the Bylaws and Kansas Law.*”

### **Dividend Rights**

Holders of each series of Preferred Stock will be entitled to receive cash dividends only when, as and if declared by our Board of Directors out of funds legally available for dividends on such Preferred Stock. The rates or amounts and dates of payment of dividends will be described in the applicable prospectus supplement relating to each series of Preferred Stock. Dividends will be payable to holders of record of Preferred Stock on the record dates fixed by our Board of Directors. Dividends on any series of Preferred Stock may be cumulative or noncumulative, as described in the applicable prospectus supplement.

Our Board of Directors may not declare, pay or set apart funds for payment of dividends on a particular series of Preferred Stock unless full dividends on any other series of Preferred Stock that ranks equally with or senior to such series of Preferred Stock with respect to the payments of dividends have been paid or sufficient funds have been set apart for payment for either of:

- all prior dividend periods of each such series of Preferred Stock that pay dividends on a cumulative basis; or
- the immediately preceding dividend period of each such series of Preferred Stock that pays dividends on a noncumulative basis.

Partial dividends declared on shares of any series of Preferred Stock and other series of Preferred Stock ranking on an equal basis as to dividends will be declared pro rata. A pro rata declaration means that the ratio of dividends declared per share to accrued dividends per share will be the same for all series of Preferred Stock of equal priority.

### **Voting Rights**

The holders of shares of Preferred Stock will have no voting rights, except:

- as otherwise stated in the applicable prospectus supplement;
- as otherwise stated in the articles of amendment to our Articles establishing the series of such Preferred Stock; and
- as otherwise required by applicable law.

### **Liquidation Rights**

In the event of the liquidation, dissolution or winding-up of us, holders of each series of Preferred Stock will have the right to receive distributions upon liquidation in the amount described in the applicable prospectus supplement relating to each series of Preferred Stock, plus an amount equal to any accrued but unpaid dividends. These distributions will be made before any distribution is made on our Common Stock or on any securities ranking junior to such Preferred Stock upon liquidation, dissolution or winding-up.

However, holders of the shares of Preferred Stock will not be entitled to receive the liquidation price of their shares until we have paid or set aside an amount sufficient to pay in full the liquidation preference of any class or series of our capital stock ranking senior as to rights upon liquidation, dissolution or winding up. Unless otherwise provided in the applicable prospectus supplement, neither a consolidation or merger of the Company with or into another corporation nor a merger of another corporation with or into the Company nor a sale or transfer of all or part of the Company's assets for cash or securities will be considered a liquidation, dissolution or winding up of the Company.

If the liquidation amounts payable to holders of Preferred Stock of all series ranking on a parity regarding liquidation are not paid in full, the holders of the Preferred Stock of these series will have the right to a ratable portion of our available assets up to the full liquidation preference. Holders of these series of Preferred Stock or such other securities will not be entitled to any other amounts from us after they have received their full liquidation preference.

**Redemption Rights**

If so specified in the applicable prospectus supplement, a series of Preferred Stock may be redeemable at any time, in whole or in part, at our option, and may be mandatorily redeemable or convertible. Restrictions, if any, on the repurchase or redemption by us of any series of our Preferred Stock will be described in the applicable prospectus supplement relating to that series. Generally, any redemption of our Preferred Stock will be subject to prior Federal Reserve approval. Any partial redemption of a series of Preferred Stock would be made in the manner described in the applicable prospectus supplement relating to that series.

Upon the redemption date of shares of Preferred Stock called for redemption or upon our earlier call and deposit of the redemption price, all rights of holders of the Preferred Stock called for redemption will terminate, except for the right to receive the redemption price.

**Conversion and Exchange Rights**

The prospectus supplement will indicate whether and on what terms the shares of any future series of Preferred Stock will be convertible into or exchangeable for shares of any other class, series or security of the Company or any other corporation or any other property (including whether the conversion or exchange is mandatory, at the option of the holder or our option, the period during which conversion or exchange may occur, the initial conversion or exchange price or rate and the circumstances or manner in which the amount of common or Preferred Stock or other securities issuable upon conversion or exchange may be adjusted). It will also indicate for Preferred Stock convertible into Common Stock, the number of shares of Common Stock to be reserved in connection with, and issued upon conversion of, the Preferred Stock (including whether the conversion or exchange is mandatory, the initial conversion or exchange price or rate and the circumstances or manner in which the amount of Common Stock issuable upon conversion or exchange may be adjusted) at the option of the holder or our option and the period during which conversion or exchange may occur.

**Transfer Agent and Registrar**

The transfer agent, registrar, dividend paying agent and depository, if any, for any Preferred Stock offering will be stated in the applicable prospectus supplement.

## DESCRIPTION OF DEBT SECURITIES

*The complete terms of the debt securities will be contained in the indenture and supplemental indenture applicable to the debt securities. These documents will be included or incorporated by reference into this prospectus or the applicable prospectus supplement. You should read the indenture and applicable supplemental indenture relating to any debt securities. You should also read the applicable prospectus supplement, which will contain additional information and which may update or change some of the information below.*

We may issue, separately or together with, or upon conversion, exercise or exchange of other securities, debt securities, including debentures, notes, bonds and other evidence of indebtedness as set forth in the applicable prospectus supplement. The debt securities may be either secured or unsecured and will be either senior debt securities or subordinated debt securities. The debt securities will be issued under one or more separate indentures between us and a trustee to be specified in an accompanying prospectus supplement. Senior debt securities will be issued under a senior indenture and subordinated debt securities will be issued under a subordinated indenture. We refer to the senior indenture and the subordinated indenture together as the “indentures.” This prospectus, together with the applicable prospectus supplement, will describe the terms of each series of debt securities that we may offer from time to time.

The following summary of the material provisions of the indentures and the debt securities does not purport to be complete and is subject to, and is qualified in its entirety by reference to, the provisions of the applicable indenture and certificates evidencing the applicable debt securities, the forms of which have been filed with the SEC as exhibits to the registration statement of which this prospectus forms a part. The specific terms of the applicable indenture and debt securities will be described in the applicable prospectus supplement. If any particular terms of the applicable indenture or debt securities described in a prospectus supplement differ from any of the terms described below, then the terms described below will be deemed to have been superseded by those described in the applicable prospectus supplement. A form of each debt security, any future supplemental indenture or similar document also will be filed with the SEC.

Capitalized terms used but not defined in this section have the meanings given to those terms in the applicable prospectus supplement or, if not defined in the applicable prospectus supplement, in the applicable indenture.

As used in this section, “we,” “our,” “us” and the “Company” refer only to CrossFirst Bankshares, Inc. and not to its wholly-owned subsidiaries.

### General

Debt securities may be issued in separate series without limitation as to aggregate principal amount. We may specify a maximum aggregate principal amount for the debt securities of any series. We are not limited as to the amount of debt securities that we may issue under the indentures. Unless otherwise provided in a prospectus supplement, a series of debt securities may be reopened to issue additional debt securities of such series. The subordinated debt securities will be subordinated as described below under the heading “—*Subordinated Debt*.”

The prospectus supplement relating to a particular series of debt securities will set forth the material terms of the debt securities being offered, as established pursuant to a board resolution, in an officer's certificate or in a supplemental indenture, including:

- the title of the debt securities and whether they are senior debt securities or subordinated debt securities;
- the offering price (which may be expressed as a percentage of the aggregate principal amount) of the debt securities;
- the aggregate principal amount of such series that may be authenticated and delivered under the indentures (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 the indenture and except for any securities deemed never to have been authenticated and delivered);
- the maturity date or dates;

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- if applicable, whether the debt securities shall be subject to the defeasance provisions described below under “—*Satisfaction and Discharge*” or such other defeasance provisions specified in the applicable prospectus supplement for the debt securities;
- any conversion or exchange provisions;
- the date of the debt securities if other than the date of original issuance;
- the person who shall be entitled to receive interest, if other than the record holder on the record date and the manner in which such interest will be payable;
- the date or dates on which the principal of the debt securities of such series is payable;
- the rate or rates, and if applicable the method used to determine the rate, at which the debt securities of such series will bear interest, if any, the date or dates from which such interest will accrue, the date or dates on which such interest will be payable and the record date or dates for the interest payable on any debt securities on any interest payment date;
- the place or places where payments of principal and interest may be made and securities may be surrendered for registration of transfer or for exchange;
- the obligation, if any, of the Company to redeem or purchase the debt securities of such series, at the option of the Company or at the option of a holder thereof, pursuant to any sinking fund or other redemption provisions and the period or periods within which, the price or prices at which and the terms and conditions upon which the debt securities of the series may be so redeemed or purchased, in whole or in part;
- if issued other than in minimum denominations of \$1,000 or any multiple of \$1,000, or \$5,000 in the case of bearer securities, the denominations in which the debt securities will be issuable;
- the portion of the principal amount that will be payable upon acceleration of maturity, if other than the entire principal amount;
- if other than U.S. currency, the currency, currencies or currency units in which principal, premium, if any, or interest will be payable and the manner of determining the equivalent thereof in U.S. currency;
- if the principal of (and premium, if any, on) or any interest on the debt securities is to be payable, at our election or the election of a holder thereof, in one or more currencies other than that the currency or currencies in which the debt securities are stated to be payable, the currency or currencies in which payment is to be made payable and the periods and terms upon which such election is to be made;
- if the amount of payments of principal of (and premium, if any, on) or any interest on the debt securities of the series may be determined by reference to an index, the manner in which such amounts shall be determined;
- whether the debt securities will be issuable in the form of certificated debt securities or global debt securities;
- any interest rate calculation agents, exchange rate calculation agents or other agents for the debt securities, if other than the trustee;
- whether and under what circumstances we will pay additional amounts in respect of any series of debt securities and whether we have the option to redeem such debt securities rather than pay such additional amounts;
- any provisions relating to the extension of maturity of, or the renewal of, the debt securities of such series, or the conversion of the debt securities of such series into other securities of the Company;
- any provisions relating to the purchase or redemption of all or any portion of a tranche or series of debt securities, including the period of notice required to redeem those debt securities;
- the terms and conditions, if any, pursuant to which the debt securities are secured;
- any subordination provisions applicable to the subordinated debt securities if different from those described below under “—*Subordinated Debt*;

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- any other terms or provisions relating to the payment of principal of, premium (if any) or interest thereon, including, but not limited to, whether such debt securities are issuable at a discount or premium, as amortizable debt securities and if payable in, convertible or exchangeable for commodities or other securities of ours; and
- any other specific terms of such debt securities.

If we denominate the purchase price of any of the debt securities in a foreign currency or currencies, or if the principal of or premium, if any, or interest on any series of debt securities is payable in a foreign currency or currencies, we will include in the applicable prospectus supplement information on the restrictions, elections, material United States federal income tax considerations, specific terms and other information with respect to that issue of debt securities and the relevant foreign currency or currencies.

Unless otherwise specified in the prospectus supplement, the debt securities will be registered debt securities. Debt securities may be sold at a substantial discount below their stated principal amount, bearing no interest or interest at a rate which at the time of issuance is below market rates. The material United States federal income tax considerations applicable to debt securities sold at a discount will be described in the applicable prospectus supplement.

### **Senior Debt**

Except as otherwise provided in a prospectus supplement, senior debt securities will be unsecured and will rank equally with all other unsecured and unsubordinated debt of the Company, and will rank senior in right of payment to any subordinated debt.

### **Subordinated Debt**

Except as otherwise provided in a prospectus supplement, subordinated debt securities will be unsecured and will be subordinated in right of payment to the prior payment in full of all of our Senior Indebtedness, as more fully described in the applicable prospectus supplement. Notwithstanding the foregoing, if a deposit is made in accordance with the terms of the indenture with respect to any debt securities (and provided all other conditions set out in the indenture shall have been satisfied with respect to such debt securities), then, when the 90<sup>th</sup> day after such deposit has ended, no money obligations so deposited, and no proceeds thereon, will be subject to any rights of holders of Senior Indebtedness, including any rights of subordination.

Under the subordinated debt indenture, Senior Indebtedness means the principal of (and premium, if any), accrued interest (including interest accruing on or after the filing in bankruptcy or reorganization relating to the Company whether or not a claim for post-filing interest is allowed in such proceedings), fees, charges, expenses, reimbursement obligations, guarantees and other amounts owing with respect to all Indebtedness of the Company (including Indebtedness of others guaranteed by the Company) other than the subordinated debt securities, in any such case whether outstanding on the date of the indenture or the date the subordinated debt securities of any series are issued thereunder or thereafter created, incurred or assumed, unless in any case in the instrument creating or evidencing any such Indebtedness or obligation or pursuant to which the same is outstanding it is provided that such Indebtedness or obligation is not superior in right of payment to the subordinated debt securities or it is provided that such Indebtedness or obligation is subordinated to Senior Indebtedness to substantially the same extent as the subordinated debt securities are subordinated to Senior Indebtedness. Under the subordinated debt indenture, Indebtedness means any indebtedness, whether or not contingent, in respect of borrowed money or evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof) or representing capital lease obligations or the balance deferred and unpaid of the purchase price of any property or representing any hedging obligations, except any such balance that constitutes an accrued expense or trade payable and also includes, to the extent not otherwise included, the guaranty of any indebtedness.

### **Methods of Receiving Payments on the Debt Securities**

Unless otherwise indicated in a prospectus supplement, the debt securities will be payable as to principal, redemption premium, if any, and interest at the office or agency of the paying agent (which may be us) or, at our option, payment of interest may be made by check mailed to the holders of the debt securities at their last addresses as they appear on the register of holders or wired if held in book-entry form.

**Events of Default; Waiver**

Unless we indicate otherwise in a prospectus supplement with respect to a particular series of debt securities, an “event of default,” when used in the indentures, means any of the following:

- our default in the payment of the principal (or premium, if any) on any of the debt securities of such series as and when due, either at maturity, upon redemption, by declaration or otherwise, or any payment required by any sinking or analogous fund with respect to any series of the debt securities;
- our default in the payment of any installment of interest on the debt securities when due, and continuance of such default for a period of 90 days;
- our failure to observe or perform any other covenant or agreement in the debt securities or the applicable indenture and the continuance of such default or breach for a period of 90 days after our receipt of written notice from the trustee or the holders of at least 25% in aggregate principal amount of the debt securities then outstanding of that series specifying such failure and requiring it to be remedied;
- a court having jurisdiction enters a decree or order for relief in respect of us or a Material Subsidiary in an involuntary case or proceeding under any applicable bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of us or a Material Subsidiary or for any substantial part of our or its respective property, or ordering the winding-up or liquidation of our affairs shall have been entered and remained unstayed and in effect for a period of 60 consecutive days;
- we or a Material Subsidiary commence a voluntary case or proceeding under any applicable bankruptcy, insolvency or other similar law, or consent to the entry of a decree or order for relief in an involuntary case or proceeding under any such law, or the consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of us or a Material Subsidiary or of any substantial part of our or its respective property, or the making by us or a Material Subsidiary of a general assignment for the benefit of creditors; or
- any other event of default provided with respect to a particular series of debt securities, as described in the supplement indenture under which we issue such series.

A “Material Subsidiary” means CrossFirst Bank or any successor thereof or any of our subsidiaries that is a depository institution and that has consolidated assets equal to 80% or more of our consolidated assets.

If an event of default occurs and continues as described in the first, second, third or sixth bullet above, either the trustee or the holders of at least 25% in aggregate principal amount of the debt securities of that series then outstanding by written notice to us (with a copy to the trustee, if given by holders) may declare the principal amount of the debt securities of that series to be immediately due and immediately payable. If an event of default occurs and continues as described in the fourth or fifth bullet above, the principal amount of all of the debt securities issued under the indentures shall automatically be deemed immediately due and payable.

The indentures also provide that the holders of a majority in principal amount of the debt securities of each series outstanding at the time may, on behalf of the holders of all of the debt securities of that series, waive any past default with respect to the debt securities and its consequences, except a default in the payment of the principal of, premium, if any, and interest on the debt securities or a bankruptcy or insolvency-related default, or with respect to any covenant or provision that cannot be modified or amended under the terms of the indenture without the holder of such outstanding debt security so affected.

**Remedies; Obligations of the Trustee**

The holders of a majority in principal amount of the debt securities of each series may 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. However, the trustee may refuse to follow any direction that conflicts with law or the indentures or that the trustee determines in good faith may be unjustly prejudicial to the holders of the debt securities not consenting or that may involve the trustee in personal liability. In addition, the trustee may take any other action it deems proper that is not inconsistent with any such direction received from the holders of a majority in principal amount of the debt securities.



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The trustee shall be under no obligation to exercise any of the rights or powers vested in it by the indentures at the request, order or direction of any of the holders of any debt securities or related coupons pursuant to the provisions of the indentures, unless such holders shall have offered to the trustee security or indemnity reasonably satisfactory to it against the losses, costs, expenses and liabilities which might be incurred by it in compliance with such request, order or direction. Except to enforce the right to receive payment of principal, premium, if any, or interest, no holder of a debt security will have any right to institute any proceeding, judicial or otherwise, with respect to the indenture, or for the appointment of a receiver or trustee, or for any other remedy under the indenture unless:

- such holder has previously given the trustee written notice of a continuing event of default;
- holders of at least 25% in aggregate principal amount of the outstanding debt securities of that series have made a written request to the trustee to institute proceedings in respect of such event of default in its own name as trustee under the indenture;
- such holders provide to the trustee reasonable indemnity acceptable to the trustee against the costs, expenses and liabilities to be incurred with such request;
- the trustee has failed to institute a proceeding within 60 days after its receipt of the notice, request and offer of indemnity; and
- the holders of a majority in aggregate principal amount of the outstanding debt securities do not give the trustee a direction inconsistent with the request within such 60-day period.

Each indenture requires the applicable trustee to notify the holders of a series regarding the existence of any default known to the trustee, unless the default has been cured or waived. In addition, except in the case of a default in payment of principal or interest on any debt security or the payment of any sinking or purchase fund installment, the trustee may withhold notice of a default if and so long as the trustee in good faith determines that withholding the notice is in the interests of the holders of the debt securities. Furthermore, the trustee shall not provide notice of default to the holders of debt securities following our failure to duly observe or perform any of the covenants or agreements contained in the debt securities or indenture (other than certain payment obligations) unless at least 30 days after the occurrence thereof. For purposes of these requirements, a “default” means any event which is, or after notice or lapse of time or both would become, an event of default under the indentures with respect to the debt securities of such series.

We are required to deliver to the trustee, within 120 days after the end of each fiscal year, commencing with the year during which the first series of debt securities is issued under an indenture, a written statement signed by certain officers regarding our performance under the indenture throughout the year and specifying any known default in the fulfilment of any of our obligations under the indenture, together with certain additional details regarding any such known default.

### **Merger, Consolidation, Sale, Lease or Conveyance**

Unless otherwise indicated in a prospectus supplement with respect to a particular series of debt securities, we will not merge into or consolidate with any other corporation, or sell or convey all or substantially all of our assets to any person, firm, or corporation, unless:

- either we are the continuing corporation or the successor corporation is a corporation organized and existing under the laws of the United States or a state thereof or the District of Columbia and expressly assumes the due and punctual payment of the principal, premium, if any, and interest on all the debt securities according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of the indenture to be performed by us by supplemental indenture, executed and delivered to the trustee by such successor corporation;
- neither we nor such successor corporation, immediately after giving effect to such merger, consolidation, sale or conveyance, will be in default in the performance of any covenant or condition under the applicable indenture; and
- we shall have delivered to the trustee an officer's certificate and an opinion of counsel, each stating that the transaction complies with the terms of the applicable indenture and that all conditions precedent in such indenture provided for relating to such transaction have been complied with.

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In the case of any such consolidation or merger, sale or conveyance and upon any such assumption by the successor corporation, the successor corporation shall succeed to, and be substituted for, us under the applicable indenture with the same effect as if it had been an original party to such indenture.

### **Certain Covenants**

The applicable prospectus supplement will describe any restrictive covenants applicable to any debt securities we offer for sale.

### **Modification of the Indenture**

Unless we indicate otherwise in a prospectus supplement and except as set forth below, modification and amendment of an indenture, or entry into a supplemental indenture applicable to the debt securities, may be made only when authorized by our Board of Directors and with the consent of the holders of not less than a majority in principal amount of the debt securities outstanding affected by such supplemental indenture, voting together as a single class.

Notwithstanding the foregoing, no modification or amendment of an indenture as applicable to any series of debt securities may:

- extend the fixed maturity of any debt security, or reduce the principal amount thereof or premium, if any, or reduce the rate or extend the time of payment of interest thereon, without the consent of the holder of each debt security so affected;
- reduce the percentage in principal amount of outstanding debt securities that is required for any supplemental indenture without the consent of the holders of all debt securities then outstanding;
- modify the subordination provisions in a manner adverse to the holders of any debt security; or
- modify any of the applicable provisions with respect to modification and waiver.

In addition, we and the trustee may modify or amend the indentures as applicable to the debt securities, with the consent of our board of directors but without the consent of any holder of the debt securities, for any of the following purposes:

- to evidence the succession of another corporation to the Company, or successive successions, and provide for the successor's assumption of our covenants, agreements and obligations under the indentures and the debt securities issued thereunder;
- to add further covenants, restrictions, conditions or provisions as our board of directors considers to be for the protection of the holders of the debt securities, and to make the occurrence, or the occurrence and continuance, of a default in any of such additional covenants, restrictions, conditions or provisions an event of default permitting the enforcement of all or any of the remedies provided under the applicable indenture, with such period of grace and subject to such conditions as such supplemental indenture may provide;
- to add any additional Events of Default;
- to add or change any of the provisions of the indenture to provide that Bearer Securities may be registrable as to principal, to change or eliminate any restrictions on the payment of principal of or any premium or interest on Bearer Securities, to permit Bearer Securities to be issued in exchange for Registered Securities, to permit Bearer Securities to be issued in exchange for Bearer Securities of other authorized denominations or to permit or facilitate the issuance of debt securities in uncertificated form; provided, that any such action shall not adversely affect the interests of the holders of the debt securities or any related coupons in any material respect;
- to modify, eliminate or add provisions of the indenture to such extent as necessary in order to effect the qualification of the applicable indenture under the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act"), or any similar federal statute thereafter enacted, and to add such other provisions as may be expressly permitted by the Trust Indenture Act, excluding Section 316(a)(2) thereof or any corresponding provision in any similar federal statute hereafter enacted;

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- to modify, eliminate or add to any provisions of the indenture; provided that any such change or elimination (i) becomes effective only when there are no outstanding debt securities and created prior to the execution of such supplemental indenture that is entitled to the benefit from such provision or (ii) does not apply to any outstanding debt security;
- to cure any ambiguity or to correct or supplement any provision in the indenture or any supplemental indenture which may be defective or inconsistent with any other provision, (ii) to convey, transfer, assign, mortgage or pledge any property to or with the trustee or (iii) to make such other provisions in regard to matters or questions arising under the indenture; provided, that no such provision shall adversely affect in any material respect the interests of the holders of the debt securities or any related coupons, including provisions necessary or desirable to provide for or facilitate the administration of the trusts;
- to secure any series of debt securities;
- to establish any series of Securities and the form or terms of any series as permitted by the indenture;
- to evidence and provide for the acceptance and appointment by a successor trustee with respect to the debt securities of one or more series and to add or change any provisions of the indenture as necessary to provide for or facilitate the administration of the trusts; or
- to add to, change or eliminate any of the provisions relating to the subordination of Securities to Senior Indebtedness or change the definition of Senior Indebtedness in respect of one or more series of Securities, including outstanding Securities; provided, however, that no provision in any supplemental indenture that affects the superior position of holders of Senior Indebtedness shall be effective against holders of Senior Indebtedness.

The trustee shall not be obligated to enter into any amendment or supplemental indenture that adversely affects the trustee's own rights, duties or immunities under the Securities or the applicable indenture or will otherwise adversely affect it.

Subject to the requirements for the holders to waive a default related to bankruptcy events, defaults related to covenants or provisions that cannot be modified without the consent of each affected holder, and the rights of any holder of a debt security to receive payment of principal of, premium, if any, on and interest on such debt securities, holders of a majority in aggregate principal amount of the debt securities voting as a single class of such series or of all debt securities, as the case may be, then outstanding may waive all defaults with respect to that series or with respect to all securities treated as a single class and rescind and annul such declaration and its consequences, but no waiver or rescission and annulment will extend to or affect any subsequent default.

### **Outstanding Debt Securities; Determinations of Holders' Actions**

Debt securities outstanding at any time are the debt securities authenticated and delivered by the trustee except for those cancelled by the trustee or delivered to the trustee for cancellation, those debt securities, or portions thereof, for which we have deposited in trust with the trustee or any paying agent a sufficient amount of money for the payment or redemption thereof, those debt securities that have been defeased under the indenture, and those debt securities that have been exchanged for other debt securities issued under the indenture or that have been mutilated, destroyed, lost or stolen and replaced by the trustee. A debt security does not cease to be outstanding because we or an affiliate of ours holds the debt security; provided, that in determining whether the holders of the requisite aggregate principal amount of debt securities have given or concurred in any request, demand, authorization, notice, direction, consent or waiver, debt securities owned by us, any other obligor of the debt securities or any other person directly or indirectly controlling or controlled by or under direct or indirect common control with us or any other obligor on the debt securities, will be disregarded and deemed not to be outstanding for the purpose of any such determination, except for determining whether the trustee shall be protected in relying on any such request, demand, authorization, direction, notice, consent or waiver, only debt securities which the trustee knows are so owned will be so disregarded, and debt securities that have been pledged in good faith may also be regarded as outstanding under certain circumstances.

## **Satisfaction and Discharge**

Each indenture may be discharged and cease to be of further effect as to the applicable debt securities, when:

- either:
  - all debt securities of any series that have been authenticated and all coupons, if any, appertaining thereto have been delivered to the trustee for cancellation, except (i) coupons on Bearer Securities that meet certain conditions, (ii) debt securities and coupons that have been destroyed, lost or stolen and that have been replaced or paid as provided in the indenture, (iii) coupons relating to debt securities called for redemption and maturing after the relevant redemption date, whose surrender has been waived, and (iv) debt securities and coupons for which payment has been deposited in trust or segregated and held in trust by us and thereafter repaid to us or discharged from such trust; or
  - all debt securities and certain coupons discussed above that have not been delivered to the trustee for cancellation (i) have become due and payable, (ii) are by their terms due and payable within one year or (iii) are to be called for redemption within one year under arrangements satisfactory to the trustee for the giving of notice of redemption, and in the case of clauses (i) and (iii) in the preceding bullet point, we have deposited or caused to be deposited with the trustee as trust funds the entire amount (other than moneys repaid by the trustee or any paying agent to us under the terms of the indenture) sufficient to pay at maturity or upon redemption all debt securities of such series and coupons not delivered to the trustee for cancellation, including principal (and premium, if any) and any interest due or to become due to such date of maturity or date of redemption;
- we have paid or caused to be paid all other sums payable by us under the applicable indenture with respect to the debt securities;
- upon demand of and at our cost and expense, the trustee has executed instruments reasonably requested by us acknowledging the satisfaction and discharge of the applicable indenture with respect to the debt securities; and
- we have delivered to the trustee an officer's certificate and an opinion of counsel stating that the conditions precedent to the satisfaction and discharge of the debt securities have been complied with.

## **Legal Defeasance and Covenant Defeasance**

### *Legal Defeasance*

Under the terms of the indentures and unless otherwise provided in a supplemental indenture, we will be deemed to have paid and will be discharged from any and all obligations in respect of the debt securities after we have made the deposit referred to below and the conditions precedent and subsequent set forth below are satisfied, and the provisions of the applicable indenture will cease to be applicable with respect to the debt securities (except for, among other matters, certain rights of the holders to receive payments of principal, premium and interest when due on such debt securities from the trust fund, and our obligations to register the transfer of or exchange of the debt securities, prepare temporary debt securities, replace stolen, lost or mutilated debt securities, maintain paying agents and hold funds for payment in trust, and rights, powers, trusts, duties and immunities with respect to the trustee) if:

- we have irrevocably deposited or caused to be deposited with the trustee, in trust, money in an amount and/or non-callable or non-redeemable government securities that will provide funds in amount sufficient, in the opinion of a nationally recognized public accounting firm expressed in a written certification delivered to the trustee, to pay the principal of, premium, if any, and accrued interest on the debt securities until maturity or redemption in accordance with the terms of the applicable indenture and any mandatory sinking fund payments or analogous payments applicable to such debt securities;
- no default or event that after notice or lapse of time, or both, would become a default with respect to such debt securities, will have occurred and be continuing on the date of such deposit, or insofar as

events of default due to certain events of bankruptcy, insolvency or reorganization in respect of us are concerned, during the period ending on the 123rd day after the date of such deposit or, if longer, ending on the day following the expiration of the longest preference period applicable to the company with respect to such deposit;

- such defeasance or covenant defeasance does not (i) cause the trustee for the debt securities to have a conflicting interest under the terms of the indenture or the Trust Indenture Act or (ii) result in the trust arising from such deposit to constitute, unless it is qualified, a regulated investment company under the Investment Company Act of 1940, as amended;
- such defeasance or covenant defeasance does not result in a breach or violation of, or constitute a default under, the indenture or any other agreement or instrument to which we are a party or by which we are bound;
- such defeasance or covenant defeasance does not cause any debt securities of such series then listed on any registered national securities exchange under the Exchange Act to be delisted;
- we have delivered to the trustee an opinion of counsel stating that (i) we have received from, or there has been published by, the Internal Revenue Service a ruling or (ii) since the date of the indenture there has been a change in the applicable United States federal income tax law to the effect that, and based thereon, holders of the debt securities will not recognize income, gain or loss for federal income tax purposes as a result of such defeasance and will be subject to United States federal income tax on the same amounts and in the same manner and at the same times as would have been the case if such defeasance had not occurred;
- such defeasance is effected in compliance with any terms, conditions or limitations which may be imposed on the Company in connection with a supplemental indenture or board resolutions establishing such series of debt securities; and
- we shall have delivered to the trustee an officer's certificate and an opinion of counsel, each stating that all conditions precedent and subsequent provided for in the indenture relating to the defeasance have been complied with.

#### *Covenant Defeasance*

Under the terms of the indentures and unless as otherwise provided in a supplemental indenture, we will not need to comply with certain restrictive covenants, and the provisions of the applicable indenture will cease to be applicable with respect to an event of default under the debt securities other than an event of default due to our failure to pay the principal of or interest on the debt securities when due, upon:

- the satisfaction of the conditions described above in “– *Legal Defeasance and Covenant Defeasance – Legal Defeasance*,” other than with respect to the sixth bullet point; and
- our delivery to the trustee of an opinion of counsel to the effect that the holders of the debt securities will not recognize income, gain or loss for United States federal income tax purposes as a result of such covenant defeasance and will be subject to United States federal income tax on the same amount and in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred.

If we exercise our option to omit compliance with certain provisions of the applicable indenture as described in the immediately preceding paragraph and the debt securities are declared due and payable because of the occurrence of an event of default that remains applicable, the amount of money and/or non-callable government securities on deposit with the trustee may not be sufficient to pay amounts due on the debt securities at the time of acceleration resulting from such event of default. In such event, we will remain liable for such payments.

#### **Limitation on Individual Liability**

No incorporator or past, present or future stockholder, officer or director of ours or any successor corporation, as such, will have any liability for any obligations, covenants or agreements of ours under the debt securities or the indentures or because of any indebtedness evidenced thereby. Each holder of a debt security, by

accepting a debt security waives and releases such liability. The waiver and release are part of the consideration for the issuance of the debt securities. Such waiver may not be effective to waive liabilities under the federal securities laws.

### **Trustee**

The accompanying prospectus supplement will specify the trustee for the particular series of debt securities to be issued under the indentures.

At all times, the trustee must be a corporation organized and doing business under the laws of the United States or any state or territory thereof or of the District of Columbia, with authority to exercise corporate trust powers, be subject to the supervision or examination by federal, state, territorial or District of Columbia authority, have at all times a combined capital and surplus of not less than \$50,000,000 and not be the Company or any person directly or indirectly controlled or controlled by or under common control with the Company.

If the trustee acquires any conflicting interest, as defined in the Trust Indenture Act, with respect to the debt securities, within 90 days after the trustee has acquired a conflicting interest, which has not been cured or waived, the trustee would generally be required by the Trust Indenture Act to eliminate that conflicting interest or resign as trustee with respect to the debt securities issued under the applicable indenture. If the trustee resigns, we are required to appoint a successor trustee with respect to the affected securities promptly. The trustee and/or certain of its affiliates may provide banking, investment and other services to us.

### **Notices**

Any notices required to be given to the holders of the debt securities will be given by mail to the addresses of the holders in the security register.

### **Governing Law**

The indentures and the debt securities are governed by, and will be construed in accordance with, the laws of the State of New York. The indentures will be subject to the provisions of the Trust Indenture Act that are required to be part of the indentures and will, to the extent applicable, be governed by such provisions.

### **Book-Entry Delivery and Settlement**

#### *Global Debt Securities*

We will issue any debt securities in the form of one or more global debt securities in definitive, fully registered, book-entry form. The global debt securities will be deposited with or on behalf of DTC, and registered in the name of Cede & Co., as nominee of DTC. Beneficial interests in the global debt securities will be represented through book-entry accounts of financial institutions acting on behalf of beneficial owners as direct and indirect participants in DTC. Investors may hold interests in the global debt securities through DTC.

DTC has advised us that:

- DTC is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code and a “clearing agency” registered under Section 17A of the Exchange Act.
- DTC holds securities that its participants deposit with DTC and facilitates the post-trade settlement among participants of sales and other securities transactions, such as transfers and pledges, in deposited securities through electronic computerized book-entry changes in participants' accounts, thereby eliminating the need for physical movement of security certificates.
- Direct participants include securities brokers and dealers, banks, trust companies, clearing corporations and other organizations.
- DTC is a wholly owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries.

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- Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies and clearing corporations that clear through or maintain a custodial relationship with a direct participant, either directly or indirectly.
- The rules applicable to DTC and its direct and indirect participants are on file with the SEC.

We have provided the description of the operations and procedures of DTC in this prospectus solely as a matter of convenience. These operations and procedures are solely within the control of those organizations and are subject to change by them from time to time. None of us, any underwriters or any trustee takes any responsibility for these operations or procedures, and you are urged to contact DTC or their participants directly to discuss these matters.

We expect that under procedures established by DTC:

- upon deposit of the global debt securities with DTC or its custodian, DTC will credit on its internal system the accounts of direct participants designated by any underwriters with portions of the principal amounts of the global debt securities; and
- ownership of the debt securities will be shown on, and the transfer of ownership thereof will be effected only through, records maintained by DTC or its nominee, with respect to interests of direct participants, and the records of direct and indirect participants, with respect to interests of persons other than participants.

The laws of some jurisdictions may require that purchasers of securities take physical delivery of those securities in definitive form. Accordingly, the ability to transfer interests in the debt securities represented by a global debt security to those persons may be limited. In addition, because DTC can act only on behalf of its participants, who in turn act on behalf of persons who hold interests through participants, the ability of a person having an interest in debt securities represented by a global debt security to pledge or transfer those interests to persons or entities that do not participate in DTC's system, or otherwise to take actions in respect of such interest, may be affected by the lack of a physical definitive security in respect of such interest.

So long as DTC or its nominee is the registered owner of a global debt security, DTC or that nominee will be considered the sole owner or holder of the debt securities represented by that global debt security for all purposes under the indenture and under the debt securities. Except as provided below, owners of beneficial interests in a global debt security will not be entitled to have debt securities represented by that global debt security registered in their names, will not receive or be entitled to receive physical delivery of certificated debt securities and will not be considered the owners or holders thereof under the applicable indenture or under the debt securities for any purpose, including with respect to the giving of any direction, instruction or approval to the trustee. Accordingly, each holder owning a beneficial interest in a global debt security must rely on the procedures of DTC and, if that holder is not a direct or indirect participant, on the procedures of the participant through which that holder owns its interest, to exercise any rights of a holder of debt securities under the applicable indenture or a global debt security.

Neither we nor any trustee will have any responsibility or liability for any aspect of the records relating to or payments made on account of debt securities by DTC, or for maintaining, supervising or reviewing any records of those organizations relating to the debt securities.

Payments on the debt securities represented by the global debt securities will be made to DTC or its nominee, as the case may be, as the registered owner thereof. We expect that DTC or its nominee, upon receipt of any payment on the debt securities represented by a global debt security, will credit participants' accounts with payments in amounts proportionate to their respective beneficial interests in the global debt security as shown in the records of DTC or its nominee. We also expect that payments by participants to owners of beneficial interests in the global debt security held through such participants will be governed by standing instructions and customary practice as is currently the case with securities held for the accounts of customers registered in the names of nominees for such customers. The participants will be responsible for those payments.

### *Settlement Procedures*

Secondary market trading between DTC participants will occur in the ordinary way in accordance with DTC rules and will be settled in immediately available funds.

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*Certificated Debt Securities*

Individual certificates in respect of any debt securities will not be issued in exchange for the global debt securities, except in very limited circumstances. We will issue or cause to be issued certificated debt securities to each person that DTC identifies as the beneficial owner of the debt securities represented by a global debt security upon surrender by DTC of the global debt security if:

- DTC notifies us that it is no longer willing or able to act as a depository for such global debt security or ceases to be a clearing agency registered under the Exchange Act, and we have not appointed a successor depository within 90 days of that notice or becoming aware that DTC is no longer so registered;
- an event of default has occurred and is continuing, and DTC requests the issuance of certificated debt securities; or
- subject to DTC's procedures, we determine not to have the debt securities of such series represented by a global debt security.

Neither we nor any trustee will be liable for any delay by DTC, its nominee or any direct or indirect participant in identifying the beneficial owners of the debt securities. We and any trustee may conclusively rely on, and will be protected in relying on, instructions from DTC or its nominee for all purposes, including with respect to the registration and delivery, and the respective principal amounts, of any certificated debt security to be issued.



## DESCRIPTION OF DEPOSITARY SHARES

*We may elect to offer fractional interests in shares of our Preferred Stock, in which case we will issue receipts for depositary shares and each depositary share will represent a fraction of a share of the applicable series of our Preferred Stock, as set forth in the applicable prospectus supplement. The following summary of the terms of the depositary shares does not purport to be complete and is subject to, and is qualified in its entirety by reference to, the terms of the depositary shares and our Preferred Stock, as well as the form of the deposit agreement, depositary receipts, our Articles and any amendments thereto relating to the applicable series of our Preferred Stock that will be filed with the SEC. Therefore, you should carefully consider the actual provisions in these documents.*

### General

Each owner of a depositary share will be entitled, in proportion to the applicable fractional interest in shares of our Preferred Stock underlying that depositary share, to all rights and preferences of our Preferred Stock underlying that depositary share. These rights may include dividend, voting, redemption and liquidation rights.

The shares of our Preferred Stock underlying the depositary shares will be deposited with a bank or trust company selected by us to act as depositary, under a deposit agreement between us, the depositary and the holders of the depositary receipts. The depositary will be the transfer agent, registrar and dividend disbursing agent for the depositary shares. The name and address of the principal executive office of the depositary will be included in the prospectus supplement relating to the issue.

The depositary shares will be evidenced by depositary receipts issued pursuant to the depositary agreement. Holders of depositary receipts agree to be bound by the deposit agreement, which will require holders to take certain actions, such as filing proof of residence and paying certain charges.

### Dividends and Other Distributions

The depositary will distribute cash dividends or other cash distributions, if any, received in respect of the series of our preferred stock underlying the depositary shares to the record holders of depositary receipts in proportion to the number of depositary shares owned by those holders on the relevant record date. The relevant record date for depositary shares will be the same date as the record date for our Preferred Stock.

In the event of a distribution other than in cash, the depositary will distribute property received by it to the record holders of depositary receipts that are entitled to receive the distribution, unless the depositary determines that it is not feasible to make the distribution. If this occurs, the depositary, with our approval, may adopt another method for the distribution, including selling the property and distributing the net cash proceeds to the holders.

### Liquidation Preference

If a series of our Preferred Stock underlying the depositary shares has a liquidation preference, in the event of our voluntary or involuntary liquidation, dissolution or winding-up, holders of depositary shares will be entitled to receive the fraction of the liquidation preference accorded each share of the applicable series of our Preferred Stock, as set forth in the applicable prospectus supplement.

### Redemption

If a series of our Preferred Stock underlying the depositary shares is subject to redemption, the depositary shares will be redeemed from the proceeds received by the depositary resulting from the redemption, in whole or in part, of our preferred stock held by the depositary. Whenever we redeem any of our Preferred Stock held by the depositary, the depositary will redeem, as of the same redemption date, the number of depositary shares representing our Preferred Stock so redeemed. The depositary will mail the notice of redemption to the record holders of the depositary receipts promptly upon receiving the notice from us, unless otherwise provided in the applicable prospectus supplement, prior to the date fixed for redemption of our Preferred Stock.

After the date fixed for redemption, the depositary shares called for redemption will no longer be outstanding. When the depositary shares are no longer outstanding, all rights of the holders will terminate, except the right to receive money, securities or other property payable upon redemption.

### **Voting**

Upon receipt of notice of any meeting at which the holders of our Preferred Stock are entitled to vote, the depositary will mail the information contained in the notice of meeting to the record holders of the depositary receipts underlying our Preferred Stock. Each record holder of those depositary receipts on the record date will be entitled to instruct the depositary as to the exercise of the voting rights pertaining to the amount of our Preferred Stock underlying that holder's depositary shares. The record date for the depositary will be the same date as the record date for our Preferred Stock. The depositary will try, as far as practicable, to vote the shares of our Preferred Stock underlying the depositary shares in accordance with these instructions. We will agree to take all action that may be deemed necessary by the depositary in order to enable the depositary to vote our Preferred Stock in accordance with these instructions. The depositary will not vote our Preferred Stock to the extent that it does not receive specific instructions from the holders of depositary receipts.

### **Withdrawal of Preferred Stock**

Owners of depositary shares will be entitled to receive, upon surrender of depositary receipts at the principal office of the depositary and payment of any unpaid amount due to the depositary, the number of whole shares of our Preferred Stock underlying their depositary shares.

Partial shares of our Preferred Stock will not be issued. Holders of our Preferred Stock will not be entitled to deposit the shares under the deposit agreement or to receive depositary receipts evidencing depositary shares for our Preferred Stock.

### **Amendment and Termination of the Deposit Agreement**

The form of depositary receipt evidencing the depositary shares and any provision of the deposit agreement may be amended by agreement between the depositary and us. However, any amendment that materially and adversely alters the rights of the holders of depositary shares, other than fee changes, will not be effective unless the amendment has been approved by the holders of at least a majority of the outstanding depositary shares. The deposit agreement may be terminated by the depositary or us only if:

- all outstanding depositary shares have been redeemed; or
- there has been a final distribution of our Preferred Stock in connection with our dissolution and such distribution has been made to all holders of depositary shares.

### **Charges of Depositary**

We will pay all United States transfer and other taxes and governmental charges arising solely from the existence of the depositary arrangement. We will also pay charges of the depositary in connection with:

- the initial deposit of our Preferred Stock;
- the initial issuance of the depositary shares;
- any redemption of our Preferred Stock; and
- all withdrawals of our preferred stock by owners of depositary shares.

Holders of depositary receipts will pay transfer, income and other taxes and governmental charges and other specified charges as provided in the deposit agreement for their accounts. If these charges have not been paid, the depositary may:

- refuse to transfer depositary shares;
- withhold dividends and distributions; and
- sell the depositary shares evidenced by the depositary receipt.

### **Miscellaneous**

The depositary will forward to the holders of depositary receipts all reports and communications we deliver to the depositary that we are required to furnish to the holders of our Preferred Stock. In addition, the depositary will make available for inspection by holders of depositary receipts at the principal office of the depositary, and at such other places as it may from time to time deem advisable, any reports and communications we deliver to the depositary as the holder of our Preferred Stock.

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Neither we nor the depositary will be liable if either we or the depositary are prevented or delayed by law or any circumstance beyond the control of either the depositary or us in performing our respective obligations under the deposit agreement. Our obligations and the depositary's obligations will be limited to the performance in good faith of our or the depositary's respective duties under the deposit agreement. Neither we nor the depositary will be obligated to prosecute or defend any legal proceeding in respect of any depositary shares or our Preferred Stock unless satisfactory indemnity is furnished. The depositary and we may rely on:

- written advice of counsel or accountants;
- information provided by holders of depositary receipts or other persons believed in good faith to be competent to give such information; and
- documents believed to be genuine and to have been signed or presented by the proper party or parties.

### **Resignation and Removal of Depositary**

The depositary may resign at any time by delivering a notice to us. We may remove the depositary at any time. Any such resignation or removal will take effect upon the appointment of a successor depositary and its acceptance of such appointment. The successor depositary must be appointed within 60 days after delivery of the notice for resignation or removal. The successor depositary must be a bank and trust company having its principal office in the United States of America and having a combined capital and surplus of at least \$50,000,000.

## DESCRIPTION OF WARRANTS

### General

We may issue warrants in one or more series to purchase debt securities, Common Stock, Preferred Stock or any combination of these securities. Warrants may be issued independently or together with any underlying securities and may be attached to or separate from the underlying securities. We will issue each series of warrants under a separate warrant agreement to be entered into between us and a warrant agent. The warrant agent will act solely as our agent in connection with the warrants of such series and will not assume any obligation or relationship of agency for or on behalf of holders or beneficial owners of warrants. The following sets forth some of the general terms and provisions of the warrants. Further terms of the warrants and the applicable warrant agreement will be stated in the applicable prospectus supplement. The following description and any description of the warrants in a prospectus supplement are not complete and are subject to and qualified in their entirety by reference to the terms and provisions of the warrant agreement and related form of warrant certificate representing the warrants, which we will file with the SEC in connection with an issuance of any warrants.

The applicable prospectus supplement will describe the terms of any warrants, including the following, as may be applicable:

- the title of the warrants;
- the total number of warrants to be issued;
- the consideration for which we will issue the warrants, including the applicable currency or currencies;
- anti-dilution provisions to adjust the number or amount of shares of our Common Stock or other securities to be delivered upon exercise of the warrants;
- the designation and terms of the underlying securities purchasable upon exercise of the warrants;
- the price at which and the currency or currencies in which investors may purchase the underlying securities purchasable upon exercise of the warrants;
- the dates on which the right to exercise the warrants will commence and expire;
- the procedures and conditions relating to the exercise of the warrants;
- whether the warrants will be in registered or bearer form;
- information with respect to book-entry registration and transfer procedures, if any;
- the minimum or maximum amount of warrants that may be exercised at any one time;
- the designation and terms of the underlying securities with which the warrants are issued and the number of warrants issued with each underlying security;
- the date on and after which the warrants and securities issued with the warrants will be separately transferable;
- a discussion of material United States federal income tax considerations;
- the identity of the warrant agent; and
- any other terms of the warrants, including terms, procedures and limitations relating to the exchange, transfer and exercise of the warrants.

Warrant certificates may be exchanged for new warrant certificates of different denominations, and warrants may be exercised at the warrant agent's corporate trust office or any other office indicated in the applicable prospectus supplement. Prior to the exercise of their warrants, holders of warrants exercisable for shares of our Common Stock or Preferred Stock will not have any rights of holders of our Common Stock or Preferred Stock purchasable upon such exercise, including any rights to vote such shares or to receive any distributions or dividends thereon.

**Exercise of Warrants**

A warrant will entitle the holder to purchase for cash an amount of securities at an exercise price that will be stated in, or that will be determinable as described in, the applicable prospectus supplement. Warrants may be exercised at any time prior to the close of business on the expiration date and in accordance with the procedures set forth in the applicable prospectus supplement. Upon and after the close of business on the expiration date, unexercised warrants will be void and have no further force, effect or value.

## DESCRIPTION OF PURCHASE CONTRACTS AND PURCHASE UNITS

We may issue purchase contracts for the purchase or sale of Common Stock, Preferred Stock or debt securities issued by us as specified in the applicable prospectus supplement. Each purchase contract will entitle the holder thereof to purchase or sell, and obligate us to sell or purchase on specified dates, such securities at a specified purchase price, which may be based on a formula, all as set forth in the applicable prospectus supplement. We may, however, satisfy our obligations, if any, with respect to any purchase contract by delivering the cash value of such purchase contract or the cash value of the securities otherwise deliverable, as set forth in the applicable prospectus supplement. The applicable prospectus supplement will also specify the methods by which the holders may purchase or sell such securities, and any acceleration, cancellation or termination provisions or other provisions relating to the settlement of a purchase contract. The price per security and the number of securities may be fixed at the time the purchase contracts are entered into or may be determined by reference to a specific formula set forth in the applicable purchase contracts.

The purchase contracts may be issued separately or as part of units consisting of a purchase contract and debt securities, or any other securities offered under this prospectus and described in the applicable prospectus supplement or any combination of the foregoing, securing the holders' obligations to purchase the securities under the purchase contracts, which we refer to herein as purchase units. The purchase contracts may require holders to secure their obligations under the purchase contracts in a specified manner. The purchase contracts also may require us to make periodic payments to the holders of the purchase contracts or the purchase units, as the case may be, or vice versa, and those payments may be unsecured or pre-funded on some basis.

The prospectus supplement relating to any offering of purchase contracts or purchase units will contain the specific terms of the purchase contracts or purchase units. These terms may include, without limitation, the following:

- whether the purchase contracts obligate the holder or us to purchase or sell, or both purchase and sell, the securities subject to purchase under the purchase contract, and the nature and amount of each of those securities, or the method of determining those amounts;
- whether the purchase contracts are to be prepaid or not;
- whether the purchase contracts are to be settled by delivery, or by reference or linkage to the value, performance or level of the securities subject to purchase under the purchase contract;
- any acceleration, cancellation, termination or other provisions relating to the settlement of the purchase contracts or purchase units;
- a discussion of the material United States federal income tax considerations applicable to the purchase contracts or purchase units;
- whether the purchase contracts or purchase units will be issued in fully registered or global form; and
- any other terms of the purchase contracts or purchase units and any securities subject to such purchase contracts.

The description in the applicable prospectus supplement of any purchase contracts and purchase units we offer will not necessarily be complete and is subject to, and will be qualified in its entirety by reference to, the applicable purchase contract or unit agreement, which will be filed with the SEC in connection with any offering of such securities.

## DESCRIPTION OF SUBSCRIPTION RIGHTS

We may issue subscription rights to purchase our Common Stock, Preferred Stock or debt securities. These subscription rights may be issued independently or together with any other security offered hereby and may or may not be transferable by the stockholder receiving the subscription rights in such offering. In connection with any offering of subscription rights, we may offer any unsubscribed securities directly to persons other than stockholders or enter into a standby arrangement with one or more underwriters or other purchasers pursuant to which the underwriters or other purchasers may be required to purchase any securities that have not been subscribed for after such offering, or use a combination of such methods, as described in the applicable prospectus supplement.

The applicable prospectus supplement will describe the specific terms of any offering of subscription rights for which this prospectus is being delivered, including the following:

- the price, if any, for the subscription rights;
- the exercise price payable for each share of our Common Stock or Preferred Stock or for debt securities upon the exercise of the subscription rights;
- the number of subscription rights issued to each stockholder;
- the number and terms of each share of our Common Stock or Preferred Stock or debt securities that may be purchased per each subscription right;
- the extent to which the subscription rights are transferable;
- the conditions to completion of the offering of subscription rights;
- any provisions for adjustment of the number or amount of securities receivable upon exercise of the subscription rights or the exercise price of the subscription rights;
- any other terms of the subscription rights, including the terms, procedures and limitations relating to the exchange and exercise of the subscription rights;
- the date on which the right to exercise the subscription rights will commence, and the date on which the subscription rights will expire;
- the extent to which the subscription rights may include an over-subscription privilege with respect to unsubscribed securities or an over-allotment privilege to the extent the securities are fully subscribed; and
- if applicable, the material terms of any standby underwriting or purchase arrangement entered into by us in connection with the offering of subscription rights.

The description in the applicable prospectus supplement of any subscription rights we offer will not necessarily be complete and is subject to, and will be qualified in its entirety by reference to, the applicable subscription rights agreement and subscription rights certificate, which will be filed with the SEC in connection with any offering of subscription rights.

## DESCRIPTION OF UNITS

We may issue units comprised of any combination of two or more of the other securities described in this prospectus and as specified in the applicable prospectus supplement. Each unit will be issued so that the holder of the unit is also the holder, with rights and obligations of a holder, of each security included in the unit. The units may be issued under unit agreements to be entered into between us and a unit agent.

The applicable prospectus supplement will specify the terms of the units, including:

- the designation and terms of the units and of any of the securities comprising the units, including whether and under what circumstances the securities comprising the units may be held or transferred separately;
- a description of the terms of any unit agreement governing the units;
- a description of the provisions for the issuance, payment, settlement, transfer or exchange of the units or of the securities comprising the units;
- a discussion of material United States federal income tax considerations, if applicable; and
- whether the units, if issued as a separate security, will be issued in fully registered or global form.

The description in the applicable prospectus supplement of any units we offer will not necessarily be complete and is subject to, and will be qualified in its entirety by reference to, the applicable unit agreement, which will be filed with the SEC in connection with any offering of units.



## PLAN OF DISTRIBUTION

We may sell the securities offered under this prospectus from time to time pursuant to underwritten public offerings, negotiated transactions, block trades or a combination of these methods or through underwriters, dealers or agents or directly to one or more purchasers. The securities may be distributed from time to time in one or more transactions (or in any combination) at:

- a fixed price or prices, which may be changed;
- market prices prevailing at the time of sale;
- prices related to the prevailing market price; or
- negotiated prices.

For each type and series of securities offered, the applicable prospectus supplement will set forth the terms of the offering, including, without limitation:

- the public offering price;
- the names of any underwriters, dealers or agents and the amount of securities underwritten or purchased by each of them, if any;
- any delayed delivery arrangements;
- the proceeds from the sale of securities to us and the use of proceeds from the sale of the securities;
- any underwriting discounts, concessions, commissions, agency fees or other compensation payable to underwriters, dealers or agents;
- any discounts or concessions allowed or re-allowed or repaid to dealers;
- estimated offering expenses; and
- the securities exchanges on which the securities will be listed, if any.

We may grant underwriters options to purchase additional securities at the public offering price, with additional underwriting commissions or discounts, as applicable, set forth in the prospectus supplement. The terms of any such option will be set forth in the prospectus supplement for those securities.

Underwriters or agents may make sales in privately negotiated transactions and/or any other method permitted by law, including sales deemed to be an “at-the-market” offering as defined in Rule 415 under the Securities Act, which includes sales made directly on Nasdaq, the existing trading market for our Common Stock, or sales made to or through a market maker other than on an exchange.

We may issue to our existing security holders, through a dividend or similar distribution, rights to purchase shares of our Common Stock or Preferred Stock, which may or may not be transferable. In any distribution of rights to our existing security holders, if all of the underlying securities are not subscribed for, we may then sell the unsubscribed securities directly to third parties or may engage the services of one or more underwriters, dealers or agents, including standby underwriters, to facilitate the distribution of the unsubscribed securities. The applicable prospectus supplement will describe the specific terms of any offering of our Common Stock or Preferred Stock through the issuance of rights including, if applicable, the material terms of any standby underwriting agreement or purchase agreement.

### **Sales Through Underwriters, Dealers or Agents; Direct Sales**

If we use underwriters in any sale of securities offered under this prospectus, the underwriters will buy the securities for their own account, including through underwriting, purchase, security lending or repurchase agreements with us. The underwriters may then resell the securities in one or more transactions at a fixed public offering price or at varying prices determined at the time of sale or thereafter. Unless otherwise indicated in the prospectus supplement, the obligations of the underwriters to purchase the securities will be subject to certain conditions and the underwriters will be obligated to purchase all the securities offered if they purchase any securities. The public offering price for the securities and any discounts or concessions allowed or re-allowed or paid to dealers may be changed from time to time.

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If we use dealers in any sale of securities offered under this prospectus, the securities will be sold to such dealers as principals. The dealers may then resell the securities to the public at varying prices to be determined by such dealers at the time of resale.

If agents are used in any sale of securities offered under this prospectus, they will use their reasonable best efforts to solicit purchases for the period of their appointment or to sell our securities on a continuing basis. If required, the prospectus supplement relating to any particular offering of securities will name any agents designated to solicit offers and will include information about any commissions they may be paid in that offering.

If securities offered under this prospectus are sold directly, no underwriters, dealers or agents would be involved.

We are not making an offer of securities in any state that does not permit such an offer. If we sell securities through dealers or agents, or directly, the terms of any such sales will be described in the applicable prospectus supplement.

### **Delayed Delivery Contracts**

We may authorize underwriters, dealers or agents to solicit offers from certain institutions whereby the institution contractually agrees to purchase the securities offered under this prospectus from us on a future date at a specific price. This type of contract may be made only with institutions that we specifically approve. Such institutions could include banks, insurance companies, pension funds, investment companies and educational and charitable institutions. The underwriters, dealers or agents will not be responsible for the validity or performance of these contracts. The prospectus supplement relating to the contracts will set forth the price to be paid for offered securities pursuant to such contracts, the commission payable for solicitation of the contracts and the date or dates in the future for delivery of offered securities pursuant to the contracts.

### **Market Making, Stabilization and Other Transactions**

Each issue of a new series of securities, other than issuances of our Common Stock, will not have an established trading market, except as indicated in the applicable prospectus supplement. Unless indicated in the applicable prospectus supplement, we do not expect to list the offered securities on a securities exchange, except for our Common Stock, which is listed on Nasdaq. We can provide no assurance as to whether any of our securities will have a liquid trading market.

In order to facilitate the offering of any of the securities offered under this prospectus, the underwriters with respect to any such offering may, as described in the prospectus supplement and in accordance with applicable law, engage in transactions that stabilize, maintain or otherwise affect the price of the securities or any other securities the prices of which may be used to determine payments on these securities. Stabilizing transactions involve bids to purchase the underlying security in the open market for the purpose of preventing or delaying a decline in the price of the securities. Syndicate covering transactions involve purchases of the securities in the open market after the distribution has been completed in order to cover syndicate short positions. Penalty bids permit the underwriters to reclaim a selling concession from a syndicate member when the securities originally sold by the syndicate member are purchased in a stabilizing or syndicate covering transaction to cover syndicate short positions. Any of these activities may have the effect of raising or maintaining the market price of our securities or preventing or delaying a decline in the market price of our securities. As a result, the market price of the securities may be higher than it otherwise would be in the absence of these transactions. The underwriters are not required to engage in these activities, and may end any of these activities at any time, all as described in the applicable prospectus supplement. Any person participating in the distribution of securities will be subject to applicable provisions of the Exchange Act and the rules and regulations under the Exchange Act, including Regulation M, which may limit the timing of transactions involving the securities offered under this prospectus. Furthermore, Regulation M may restrict the ability of any person engaged in the distribution of such securities to engage in market-making activities with respect to the particular securities being distributed. All of the above may affect the marketability of the securities offered under this prospectus and the ability of any person or entity to engage in market-making activities with respect to such securities.

### **Derivative Transactions and Hedging**

We, the underwriters or other agents engaged by us may engage in derivative transactions involving the securities. These derivatives may consist of short sale transactions and other hedging activities. The underwriters

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or agents may acquire a long or short position in the securities, hold or resell securities acquired and purchase options or futures on the securities and other derivative instruments with returns linked or related to changes in the price of the securities. In order to facilitate these derivative transactions, we may enter into security lending or repurchase agreements with the underwriters or agents. The underwriters or agents may effect the derivative transactions through sales of the securities to the public, including short sales, or by lending the securities in order to facilitate short sale transactions by others. The underwriters or agents may also use the securities purchased or borrowed from us or others (or, in the case of derivatives, securities received from us in settlement of those derivatives) to directly or indirectly settle sales of the securities or close out any related open borrowings of the securities.

### **General Information**

We expect that any agreements we may have with underwriters, dealers and agents will include provisions indemnifying them against certain civil liabilities, including certain liabilities under the Securities Act, or providing for contribution with respect to payments that they may be required to make. An underwriter, dealer or agent, or any of their affiliates, may be a customer of, or otherwise engage in transactions with or perform services for us in the ordinary course of business.

The specific terms of any lock-up provisions with respect to any given offering will be described in the applicable prospectus supplement.

Under the securities laws of various states, the securities offered under this prospectus may be sold in those states only through registered or licensed brokers or dealers. In addition, in various states the securities offered under this prospectus may not be offered and sold unless such securities have been registered or qualified for sale in the state or an exemption from such registration or qualification is available. We are not making an offer of securities in any state that does not permit such an offer.

**LEGAL MATTERS**

Unless otherwise indicated in the applicable prospectus supplement, the validity of the securities will be passed upon for us by Stinson LLP, Kansas City, Missouri. If legal matters are passed upon by counsel for the underwriters, dealers or agents, if any, such counsel will be named in the prospectus supplement relating to such offering.

**EXPERTS**

The consolidated financial statements of CrossFirst Bankshares, Inc. and its subsidiaries incorporated in this prospectus by reference from CrossFirst Bankshares, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2021 have been audited by FORVIS, LLP (formerly known as BKD, LLP), an independent registered public accounting firm, as stated in their report which is incorporated by reference herein. Such consolidated financial statements have been so incorporated in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

**\$250,000,000**



**CROSSFIRST**  
**BANKSHARES, INC.**

**Common Stock**  
**Preferred Stock**  
**Debt Securities**  
**Depositary Shares**  
**Warrants**  
**Purchase Contracts**  
**Purchase Units**  
**Subscription Rights**  
**Units**

**PROSPECTUS**

**, 2023**

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**PART II**

**INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 14. Other Expenses of Issuance and Distribution.**

The following table sets forth the various expenses payable by us in connection with the sale and distribution of the securities being registered hereby.

	<b>Amount to be paid</b>
SEC registration fee	\$27,550
Legal fees and expenses	*
Accounting fees and expenses	*
Printing fees	*
Trustee and depository fees and expenses	*
Blue sky fees and expenses	*
Rating agency fees	*
Listing fees and expenses	*
Miscellaneous	*
<b>Total</b>	<b>\$ *</b>

\* The fees and expenses are variable based on the securities offered and the number of issuances and accordingly cannot be estimated at this time. The applicable prospectus supplement will set forth an estimate of such expenses incurred in connection with securities to be offered and sold pursuant to this registration statement.

**Item 15. Indemnification of Directors and Officers.**

Section 17-6305 of the KGCC provides that a corporation has the power to indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation), by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, including attorneys' fees, if such person acted in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. Similarly, a Kansas corporation may also indemnify any person described in the previous sentence who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action or suit by or in the right of the corporation, if such person acted in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the corporation, except that any person found liable to the corporation may be indemnified only if a court has determined such person is fairly and reasonably entitled to indemnity for such expenses. To the extent that a present or former director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any foregoing action, suit or proceeding, or in defense of any claim, issue or matter therein, Section 17-6305 of the KGCC provides that such director, officer, employee or agent will be indemnified against expenses actually and reasonably incurred by such person in connection therewith, including attorneys' fees.

Our Articles and Bylaws provide that we will indemnify each of our officers and directors to the fullest extent permitted by applicable law (including applicable federal or state banking laws or regulations including, without limitation, 12 C.F.R. Part 359 or any successor provision), and that any modification or repeal of our articles of incorporation or bylaws will not adversely affect this indemnification right of our officers and directors with respect to any act or omission occurring prior to such modification or repeal. Our Bylaws further provide that any expenses (including attorneys' fees) actually and reasonably incurred by our officers and directors in connection with their defense of any indemnifiable proceeding or the enforcement of their indemnification rights will be paid by us in advance of the disposition of such action upon receipt of an

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undertaking by or on behalf of the officer or director to repay such amount if it is ultimately determined that such officer or director was not entitled to be indemnified (including if any such advancement of expenses is prohibited under any applicable federal or state banking laws or regulations including, without limitation, 12 C.F.R. Part 359 or any successor provisions).

As permitted by Section 17-6002(b)(8) of the KGCC, our Articles eliminate a director's liability to us and our stockholders for monetary damages for breach of a fiduciary duty as a director, except in connection with (i) any breach of the director's duty of loyalty to us or our stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) certain transactions under Section 17-6424 of the KGCC (relating to liability for unauthorized acquisitions or redemptions of, or payment of dividends on, capital stock), or (iv) for any transaction from which the director derived an improper personal benefit.

Our Bylaws also provide that the indemnification rights set forth in the bylaws are not exclusive of other indemnification rights to which an indemnified party may be entitled under any statute, provision in our Articles or Bylaws, any agreement, the vote of stockholders or disinterested directors, policy of insurance or otherwise, both as to action in their capacity and as to action in another capacity while holding their respective offices, and shall not limit in any way any right which the Company may have to provide additional indemnification with respect to the same or different persons or classes of person. Our Bylaws further authorize us to purchase and maintain insurance on behalf of our officers and directors and we have obtained insurance to cover such individuals for certain liabilities.

We have entered into indemnification agreements with each of our current officers and directors, and we anticipate that we will enter into indemnification agreements with each of our future directors and officers, that provide these individuals with a contractual right to indemnification from us to the fullest extent permitted under Kansas law against any liability that may arise by reason of their service to us, and to the advancement of expenses incurred as a result of any proceeding against them as to which they could be indemnified. The indemnification agreement supplements and clarifies existing indemnification provisions of our Articles and Bylaws and, in general, provides for indemnification to the fullest extent not prohibited by the KGCC, subject to the terms and conditions provided in the indemnification agreement. The indemnification agreement also establishes processes and procedures for indemnification claims, advancement of expenses and costs and other determinations with respect to indemnification.

Federal banking law, which is applicable to us as a bank holding company and to the Bank as an insured depository institution, limits our and the Bank's ability to indemnify their directors and officers. Neither the Bank nor we may make, or agree to make, indemnification payments to an institution-affiliated party such as an officer or director in connection with any administrative or civil action instituted by a federal banking agency if as a result of the banking agency action the indemnitee is assessed a civil money penalty, is removed from office or prohibited from participating in the conduct of our or the Bank's affairs, or is subject to a cease and desist order. Prior to the resolution of any action instituted by the applicable banking agency, the Bank, or we, as applicable, may indemnify officers and directors only if the respective board of directors, as the case may be, (i) determines in writing that the indemnified person acted in good faith and in a manner he/she believed to be in the best interest of the institution, (ii) determines after investigation that making indemnification payments would not affect our safety and soundness or the safety and soundness of the Bank, as the case may be, (iii) if the indemnified party agrees in writing to reimburse us or the Bank, as the case may be, for any indemnity payments which turn out to be impermissible, and (iv) determines that the indemnification payments would not otherwise be prohibited by federal banking law.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to officers, directors and controlling persons of the Company pursuant to the foregoing provisions, the Company has been advised that in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In addition, our ability to provide indemnification to our directors and officers is limited by federal banking laws and regulations, including, but not limited to, 12 U.S.C. § 1828(k).

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**Item 16. Exhibits.**

<b>Exhibit Number</b>	<b>Description</b>
<a href="#">1.1</a>	Form of Underwriting Agreement.*
<a href="#">3.1</a>	Articles of Incorporation of CrossFirst Bankshares, Inc. (incorporated by reference to Exhibit 3.1 to the Registrant's Registration Statement on Form S-1 (File No. 333-232704) filed with the SEC on July 18, 2019).
<a href="#">3.2</a>	Amendment to the Articles of Incorporation of CrossFirst Bankshares, Inc. (incorporated by reference to Exhibit 3.2 to the Registrant's Registration Statement on Form S-1 (File No. 333-232704) filed with the SEC on July 18, 2019).
<a href="#">3.3</a>	Bylaws of CrossFirst Bankshares, Inc. (incorporated by reference to Exhibit 3.3 to the Registrant's Registration Statement on Form S-1 (File No. 333-232704) filed with the SEC on July 18, 2019).
<a href="#">4.1</a>	Specimen Common Stock Certificate (incorporated by reference to Exhibit 4.1 to the Registrant's Registration Statement on Form S-1 (File No. 333-232704) filed with the SEC on July 18, 2019).
<a href="#">4.2</a>	Form of Senior Debt Indenture.
<a href="#">4.3</a>	Form of Subordinated Debt Indenture.
4.4	Form of Preferred Stock Certificate.*
4.5	Form of Senior Debt Security.*
4.6	Form of Subordinated Debt Security.*
4.7	Form of Depositary Agreement and Certificate.*
4.8	Form of Warrant Agreement and Certificate.*
4.9	Form of Purchase Contract Agreement.*
4.10	Form of Subscription Rights (including form of Subscription Rights Certificate).*
4.11	Form of Unit Agreement and Unit Certificate.*
<a href="#">5.1</a>	Opinion of Stinson LLP.
<a href="#">23.1</a>	Consent of FORVIS, LLP.
<a href="#">23.2</a>	Consent of Stinson LLP (included in Exhibit 5.1).
<a href="#">24.1</a>	Power of attorney (included on the signature pages herewith).
<a href="#">25.1</a>	Form T-1 Statement of Eligibility of Trustee under the Trust Indenture Act of 1939, as amended, for the Senior Debt Indenture.
<a href="#">25.2</a>	Form T-1 Statement of Eligibility of Trustee under the Trust Indenture Act of 1939, as amended, for the Subordinated Debt Indenture.
<a href="#">107</a>	Calculation of Filing Fee Tables.

\* To be filed by amendment or as an exhibit to a report filed pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 and incorporated herein by reference.

**Item 17. Undertakings.**

The undersigned registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
  - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act;
  - (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and



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- (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

*provided, however*, that the undertakings set forth in paragraphs (1)(i), (1)(ii) and (1)(iii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

- (2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (4) That, for purpose of determining liability under the Securities Act to any purchaser:
  - (i) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and
  - (ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

*Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

- (5) That, for the purpose of determining liability of the registrant under the Securities Act to any purchaser in the initial distribution of the securities: The undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:
  - (i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
  - (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by such undersigned registrant;
  - (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
  - (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

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- (6) That, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (7) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the U.S. Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.



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<u>Name</u>	<u>Position</u>	<u>Date</u>
<u>/s/ Lance Humphreys</u> Lance Humphreys	Director	February 23, 2023
<u>/s/ Mason King</u> Mason King	Director	February 23, 2023
<u>/s/ James Kuykendall</u> James Kuykendall	Director	February 23, 2023
<u>/s/ Kevin Rauckman</u> Kevin Rauckman	Director	February 23, 2023
<u>/s/ Michael Robinson</u> Michael Robinson	Director	February 23, 2023
<u>/s/ Grey Stogner</u> Grey Stogner	Director	February 23, 2023
<u>/s/ Stephen K. Swinson</u> Stephen K. Swinson	Director	February 23, 2023

CROSSFIRST BANKSHARES, INC.  
AS ISSUER,  
AND

[ \_\_\_\_\_ ],  
AS TRUSTEE,  
SENIOR INDENTURE  
DATED AS OF [ \_\_\_\_\_, \_\_\_\_\_ ]  
SENIOR DEBT SECURITIES

**CROSS-REFERENCE TABLE**

Reconciliation and tie between the Trust Indenture Act of 1939, as amended (the “Trust Indenture Act”), and the Indenture dated as of \_\_\_\_\_, 2023.

<b>SECTION OF Trust Indenture Act</b>	<b>SECTION OF INDENTURE</b>
310(a)(1) and (2)	7.09
310(a)(3) and (4)	Not applicable
310(a)(5)	7.09
310(b)	7.08 and 7.10
310(c)	Not applicable
311(a) and (b)	7.13
311(c)	Not applicable
312(a)	5.01 and 5.02(a)
312(b) and (c)	5.02(b)
313(a)	5.04(a)
313(b)	5.04(b)
313(c)	5.04(b)
313(d)	5.04(c)
314(a)	5.03
314(b)	Not applicable
314(c)(1) and (2)	14.04(i)
314(c)(3)	Not applicable
314(d)	Not applicable
314(e)	15.05
314(f)	Not applicable
315(a), (c) and (d)	7.01
315(b)	7.14
315(e)	6.14
316(a)(1)	6.12
316(a)(2)	Omitted
316(a) last sentence	8.04
316(b)	6.08
316(c)	8.06
317(a)	6.03 and 6.04
317(b)	4.03(a)
318(a)	15.07

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

Attention should also be directed to Section 318(c) of the Trust Indenture Act, which provides that the provisions of Sections 310 to and including Section 317 of the Trust Indenture Act are a part of and govern every qualified indenture, whether or not physically contained therein.

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THIS INDENTURE, dated as of [\_\_\_\_\_, \_\_\_\_], between CrossFirst Bankshares, Inc., a corporation duly organized and existing under the laws of the State of Kansas (the “Company”), and [\_\_\_\_], as trustee (the “Trustee,” which term shall include any successor trustee appointed pursuant to Article 7 of this Indenture).

WHEREAS, the Company deems it necessary to issue from time to time for its lawful purposes securities (the “Securities”) evidencing its indebtedness and has duly authorized the execution and delivery of this Indenture to provide for the issuance of the Securities in one or more series, unlimited as to principal amount, to bear such rates of interest, to mature at such time or times, and to have such other provisions as shall be fixed as hereinafter provided; and

WHEREAS, the Company represents that all acts and things necessary to constitute these presents a valid indenture and agreement according to its terms have been done and performed, and the execution of this Indenture has in all respects been duly authorized, and the Company, in the exercise of legal right and power in it vested, is executing this Indenture;

NOW, THEREFORE:

In order to declare the terms and conditions upon which the Securities are authenticated, issued and received, and in consideration of the premises, of the purchase and acceptance of the Securities by the holders thereof and of the sum of One Dollar to it duly paid by the Trustee at the execution of these presents, the receipt whereof is hereby acknowledged, the Company covenants and agrees with the Trustee, for the equal and proportionate benefit of the respective holders from time to time of the Securities, as follows:

**ARTICLE 1**  
**DEFINITIONS**

**SECTION 1.01. Definitions.**

The terms defined in this Section (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any supplemental indenture shall have the respective meanings specified in this Section. All other terms used in this Indenture that are defined in the Trust Indenture Act or that are by reference therein defined in the Securities Act shall have the meanings (except as herein otherwise expressly provided or unless the context otherwise requires) assigned to such terms in the Trust Indenture Act or in the Securities Act, as applicable, in each case as in force at the date of this Indenture as originally executed. All accounting terms used herein and not expressly defined shall have the meanings assigned to such terms in accordance with United States generally accepted accounting principles, and the term “generally accepted accounting principles” means such accounting principles as are generally accepted at the time of any computation. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision. The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular.

“Additional Amounts” shall mean any additional amounts to be paid by the Company in respect of Securities of a series, as may be specified pursuant to Section 2.03(b) hereof and in such Security and under the circumstances specified therein, in respect of specified taxes, assessments or other governmental charges imposed on certain holders who are United States Aliens.

“Authorized Newspaper” shall mean a newspaper (which, in the case of the United Kingdom, will, if practicable, be the *Financial Times (London Edition)* and, in the case of Luxembourg, will, if practicable, be the *Luxemburger Wort*) of general circulation in the place of publication, published in an official language of the country of publication and customarily published at least once a day for at least five days in each calendar week. Whenever successive weekly publications in an Authorized Newspaper are authorized or required hereunder, they may be made (unless otherwise provided herein) on the same or different days of the week and in the same or different Authorized Newspapers.

“Authorized Officer” shall have the meaning set forth in Section 3.02 hereof.

“Bearer Security” shall mean any Security established pursuant to Section 2.01 and Section 2.03 hereof which is payable to the bearer (including, without limitation, any Security in temporary or permanent global bearer form) and title to which passes by delivery only, but does not include any coupons.

“Board of Directors” or “Board” shall mean the Board of Directors of the Company or any duly authorized committee of such Board.

“Board Resolution” shall mean a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors or by a committee acting under authority of or appointment by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee.

“Business Day” shall mean, unless otherwise specified pursuant to Section 2.03(b), with respect to any Place of Payment or any other particular location referred to in this Indenture or in the Securities, a day that in the city (or in any one of the cities, if more than one) in which amounts are payable, as specified in the form of such Security, is not a day on which banking institutions are authorized or required by law or regulation to be closed.

“Capital Stock” shall mean, as to shares of a particular corporation, outstanding shares of stock of any class, whether now or hereafter authorized, irrespective of whether such class shall be limited to a fixed sum or percentage in respect of the rights of the holders thereof to participate in dividends and in the distribution of assets upon the voluntary liquidation, dissolution or winding up of such corporation.

“Commission” shall mean the Securities and Exchange Commission or any successor agency.

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

“Company Request” and “Company Order” mean, respectively, a written request or order signed in the name of the Company by its Chief Executive Officer or Chief Financial Officer, and delivered to the Trustee.

“Corporate Trust Office” shall mean the designated office of the Trustee at which, at any particular time, its corporate trust business relating to this Indenture shall be administered, which office at the date hereof is located at [\_\_\_\_\_], or such other address as the Trustee may designate from time to time by notice to 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 Company).

“Coupon” shall mean any interest coupon appertaining to a Bearer Security.

“Default” or “default” shall have the meaning specified in Article 6.

“Dollar” or “\$” shall mean a dollar or other equivalent unit in such coin or currency of the United States of America as at the time shall be legal tender for the payment of public and private debts.

“Event of Default” shall have the meaning specified in Article 6.

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended.

“Exchange Date” shall have the meaning set forth in Section 2.08.

“Holder,” “holder of Securities,” “securityholder” or other similar term shall mean (a) in the case of any Registered Security, the person in whose name such Security is registered in the Security Register kept by the Company for that purpose, in accordance with the terms hereof, and (b) in the case of any Bearer Security, the bearer thereof, and as used with respect to any coupon appertaining to any Bearer Security, the term “holder” shall mean the bearer thereof.

“Indebtedness” means, without duplication, the principal, premium, if any, unpaid interest (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Company whether or not a claim for post-filing interest is allowed in such proceeding), fees, charges, expenses, reimbursement and indemnification obligations, and all other amounts payable under or in respect of the following indebtedness of the Company, whether any such indebtedness exists as of the date of the Indenture or is created, incurred or assumed after such date: (i) all obligations for borrowed money, (ii) all obligations evidenced by debentures, Securities or other similar instruments, (iii) all obligations associated with derivative products, including but not limited to, securities contracts, foreign currency exchange contracts, swap agreements (including interest rate and foreign exchange rate swap agreements), cap agreements, floor agreements, collar agreements, interest rate agreements, foreign exchange rate agreements, options, commodity futures contracts, commodity option contracts and similar financial instruments, (iv) all obligations in respect of letters of credit or bankers acceptances or similar instruments (or reimbursement obligations with respect thereto), (v) all obligations to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (vi) all Indebtedness of others guaranteed by the Company or any of its Subsidiaries or for which the Company or any of its Subsidiaries is legally responsible or liable (whether by agreement to purchase indebtedness of, or to supply funds or to invest in, others), (vii) indebtedness secured by any mortgage, pledge, lien, charge, encumbrance or any security interest existing on property owned by the Company but excluding any obligations of the Company which are required (as opposed to elected) to be treated as finance leases under generally accepted accounting principles, (viii) purchase money and similar obligations, and (ix) any renewals, extensions, refundings or replacements of any of the foregoing.

“Indenture” shall mean this instrument as originally executed and delivered or as it may from time to time be supplemented or amended by one or more supplemental indentures entered into pursuant to the applicable provisions hereof, including, without limitation, the forms and terms of particular series of Securities established as contemplated by Article 2.

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

“Officer’s Certificate” shall mean a certificate signed by the Chief Executive Officer or the Chief Financial Officer of the Company and delivered to the Trustee.

“Opinion of Counsel” shall mean an opinion in writing signed by legal counsel, who may be an employee of or counsel to the Company and who shall be reasonably satisfactory to the Trustee, or who may be other counsel reasonably satisfactory to the Trustee.

“Original Issue Discount Securities” shall mean any Securities that are initially sold at a discount from the principal amount thereof and that provide upon an Event of Default for declaration of an amount less than the principal amount thereof to be due and payable upon acceleration thereof.

“Outstanding” or “outstanding,” when used with reference to Securities, shall, subject to the provisions of Section 8.01 and Section 8.04, mean, as of any particular time, all Securities authenticated and delivered by the Trustee under this Indenture, except:

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

(b) Securities, or portions thereof, for the payment or redemption of which moneys in the necessary amount shall have been deposited in trust with the Trustee or with any paying agent (other than the Company) or shall have been set aside and segregated and held in trust by the Company (if the Company shall act as its own paying agent) for the holders of such Securities and any coupons appertaining thereto; provided, that if such Securities, or portions thereof, are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as provided in Article 3, or provision satisfactory to the Trustee shall have been made for giving such notice;

(c) Securities that have been defeased pursuant to Section 14.02 hereof; and

(d) Securities that have been paid, mutilated, destroyed, lost or stolen and replaced pursuant to Section 2.09, or Securities in exchange for, in lieu of and in substitution for which other Securities shall have been authenticated and delivered pursuant to the terms of Section 2.07, unless proof satisfactory to the Trustee is presented that any such Securities are held by bona fide holders in due course.

“Periodic Offering” shall mean an offering of Securities of a series, from time to time, the specific terms of which (including, without limitation, the rate or rates of interest or formula for determining the rate or rates of interest thereon, if any, the maturity date or dates thereof and the redemption provisions, if any, with respect thereto) are to be determined by the Company upon the issuance of such Securities.

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

“Place of Payment,” when used with respect to the Securities of any series, means the place or places where, subject to the provisions of Section 4.02, the principal of (and premium, if any, on) and any interest on the Securities of that series are payable as specified as contemplated by Section 2.03(b).

“Possessions,” when used with respect to the United States, shall include Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and Northern Mariana Islands.

“Record date” as used with respect to any interest payment date shall have the meaning specified in Section 2.05.

“Registered Security” shall mean any Security established pursuant to Section 2.01 and Section 2.03(b) that is registered on the Security Register of the Company.

“Responsible Officer,” when used with respect to the Trustee, shall mean any officer within the Corporate Trust Office of the Trustee (or any successor group of the Trustee), including any Vice President, Assistant Vice President, Assistant Secretary or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also shall mean, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of such officer’s knowledge of and familiarity with the particular subject.

“Securities” shall have the meaning set forth in the preamble of this Indenture.

“Securities Act” shall mean the Securities Act of 1933, as amended.

“Security Register” and “Security Registrar” shall have the respective meanings set forth in Section 2.07(a) hereof.

“Subsidiary” shall mean, in respect of any Person, any corporation, association, partnership, limited liability company or other business entity of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by (a) such Person, (b) such Person and one or more Subsidiaries of such Person or (c) one or more Subsidiaries of such Person.

“Trust Indenture Act,” except as otherwise provided in this Indenture, shall mean the Trust Indenture Act of 1939, as amended, as in force at the date of this Indenture as originally executed.

“Trustee” shall mean the person identified as “Trustee” in the first paragraph hereof until the acceptance of appointment of a successor trustee pursuant to the provisions of Article 7, and thereafter shall mean such successor trustee.

“United States Alien” shall mean any person who, for United States federal income tax purposes, is a foreign corporation, a non-resident alien individual, a non-resident alien fiduciary of a foreign estate or trust, or a foreign partnership to the extent that one or more of its members is, for United States federal income tax purposes, a foreign corporation, a non-resident alien individual or a non-resident alien fiduciary of a foreign estate or trust.

“U.S. Depository” shall mean, with respect to the Securities of any series issuable or issued in whole or in part in the form of one or more permanent global Securities, the person designated as U.S. Depository by the Company pursuant to Section 2.03(b), which must be a clearing agency registered under the Exchange Act, until a successor U.S. Depository shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “U.S. Depository” shall mean or include each person who is then a U.S. Depository hereunder, and if at any time there is more than one such person, “U.S. Depository” as used with respect to the Securities of any series shall mean the U.S. Depository with respect to the Securities of such series.

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



“Voting Stock” means outstanding shares of Capital Stock having 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 because of default in dividends or other default.

**ARTICLE 2**  
**ISSUE, EXECUTION, REGISTRATION AND EXCHANGE OF SECURITIES**

**SECTION 2.01. Amount Unlimited; Issuable in Series.**

Upon the execution of this Indenture, or from time to time thereafter, Securities up to the aggregate principal amount and containing terms and conditions from time to time authorized by or pursuant to a Board Resolution, or in a supplemental indenture, as set forth in Section 2.03, may be executed by the Company and delivered to the Trustee for authentication, and the Trustee shall thereupon authenticate and make available for delivery the Securities to or upon Company Order, without any further action by the Company but subject to the provisions of Section 2.03, or in a supplemental indenture, as set forth in Section 2.03.

The Securities may be issued in one or more series. The aggregate principal amount of Securities of all series that may be authenticated, delivered and outstanding under this Indenture is not limited hereunder. The Securities of a particular series may be issued up to the aggregate principal amount of Securities for such series from time to time authorized by or pursuant to a Board Resolution.

**SECTION 2.02. Form of Trustee’s Certificate of Authentication.**

The Trustee’s certificate of authentication shall be in substantially the following form:

[Form of Trustee’s Certificate of Authentication]

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

Dated: [ ]

as Trustee

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

**SECTION 2.03. Form of Securities Generally; Establishment of Terms of Series.**

(a) The Registered Securities, if any, of each series, the Bearer Securities, if any, of each series and related coupons, if any, the temporary global Securities of each series, if any, and the permanent global Securities of each series, if any, shall be in the forms established from time to time in or pursuant to one or more Board Resolutions (and, to the extent established pursuant to rather than set forth in one or more Board Resolutions, in an Officer’s Certificate (to which shall be attached true and correct copies of the relevant Board Resolution(s)) detailing such establishment) or established in a supplemental indenture.

The Securities may be issued in typewritten, printed or engraved form with such letters, numbers or other marks of identification or designation (including "CUSIP" numbers, if then generally in use) and such legends or endorsements printed, lithographed or engraved thereon as the Company may deem appropriate and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange on which the Securities may be listed, or to conform to usage. Unless otherwise specified as contemplated hereinafter, Securities in bearer form shall have interest coupons attached.

(b) At or prior to the initial issuance of Securities of any series, the particular terms of Securities of such series shall be established in or pursuant to one or more Board Resolutions (and to the extent established pursuant to rather than set forth in one or more Board Resolutions, in an Officer's Certificate (to which shall be attached true and correct copies of the relevant Board Resolution(s)) detailing such establishment) or established in a supplemental indenture, including the following:

(1) the designation of the particular series (which shall distinguish such series from all other series);

(2) the price or prices (which may be expressed as a percentage of the aggregate principal amount of the Securities being issued) at which the Securities of the series will be issued;

(3) the aggregate principal amount 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 this Indenture and except for any Securities which, pursuant to Section 2.06, are deemed never to have been authenticated and delivered hereunder);

(4) whether Securities of the series are to be issuable as Registered Securities, Bearer Securities (with or without coupons) or both, whether any Securities of the series are to be issuable initially in temporary global form with or without coupons and, if so, the name of the U.S. Depositary with respect to any such temporary global Security, and whether any Securities of the series are to be issuable in permanent global form with or without coupons and, if so, whether beneficial owners of interests in any such permanent global Security may exchange such interests for Securities of such series and of like tenor of any authorized form and denomination and the circumstances under which any such exchanges may occur, if other than in the manner provided in Section 2.07 and the name of the U.S. Depositary with respect to any such permanent global Security;

(5) the date as of which any Bearer Securities of such series and any temporary Security in global form representing Outstanding Securities of such series shall be dated, if other than the date of original issuance of the first Securities of the series to be issued;

(6) the person to whom any interest on any Registered 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, the manner in which, or the person to whom, any interest on any Bearer Security of the series shall be payable, if otherwise than upon presentation and surrender of the coupons appertaining thereto as they severally mature, the extent to which, or the manner in which, any interest payable on a temporary global Security on an interest payment date will be paid if other than in the manner provided in Section 2.05 and the extent to which, or the manner in which, any interest payable on a permanent global Security on an interest payment date will be paid;

(7) the date or dates on which the principal of the Securities of such series is payable;

(8) the rate or rates, and if applicable the method used to determine the rate, at which the Securities of such series shall bear interest, if any, the date or dates from which such interest shall accrue, the date or dates on which such interest shall be payable and the record date or dates for the interest payable on any Registered Securities on any interest payment date;

(9) the place or places at which, subject to the provisions of Section 4.02, the principal of (and premium, if any, on) and any interest on Securities of such series shall be payable, any Registered Securities of the series may be surrendered for registration of transfer, Securities of the series may be surrendered for exchange and notices and demands to or upon the Company in respect of the Securities of the series and this Indenture may be served;

(10) the obligation, if any, of the Company to redeem or purchase Securities of such series, at the option of the Company or at the option of a holder thereof, pursuant to any sinking fund or other redemption provisions and the period or periods within which, the price or prices at which and the terms and conditions upon which Securities of the series may be so redeemed or purchased, in whole or in part;

(11) if other than minimum denominations of \$1,000 and any integral multiple thereof, the denominations in which any Registered Securities of such series shall be issuable, and the denomination or denominations in which any Bearer Securities of the series shall be issuable, if other than the minimum denomination of \$5,000;

(12) if other than the principal amount thereof, the portion of the principal amount of Securities of such series which shall be payable upon declaration of acceleration of the maturity thereof;

(13) the currency, currencies or currency units in which payment of the principal of (and premium, if any, on) and any interest on any Securities of the series shall be payable if other than the currency of the United States of America and the manner of determining the equivalent thereof in the currency of the United States of America for purposes of the definition of "Outstanding" in Section 1.01;

(14) if the principal of (and premium, if any, on) or any interest on the Securities of the series is to be payable, at the election of the Company or a holder thereof, in one or more currencies or currency units, other than that or those in which the Securities are stated to be payable, the currency or currencies in which payment of the principal of (and premium, if any, on) and any interest on Securities of such series as to which such election is made shall be payable, and the periods within which and the terms and conditions upon which such election is to be made;

(15) if the amount of payments of principal of (and premium, if any, on) or any interest on the Securities of the series may be determined with reference to an index, the manner in which such amounts shall be determined;

(16) whether the Securities will be issued in book-entry only form;

(17) any interest rate calculation agents, exchange rate calculation agents or other agents with respect to Securities of such series;

(18) if either or both of Section 14.02 and Section 14.03 do not apply to the Securities of the series;

(19) whether and under what circumstances the Company will pay Additional Amounts in respect of any series of Securities and whether the Company has the option to redeem such Securities rather than pay such Additional Amounts;

(20) any provisions relating to the extension of maturity of, or the renewal of, Securities of such series, or the conversion of Securities of such series into other securities of the Company;

(21) any provisions relating to the purchase or redemption of all or any portion of a tranche or series of Securities, including the period of notice required to redeem those Securities;

(22) the terms and conditions, if any, pursuant to which the Securities of the series are secured;

(23) the subordination terms of the Securities of the series; and

(24) any other terms of the Securities or provisions relating to the payment of principal of, premium (if any) or interest thereon, including, but not limited to, whether such Securities are issuable at a discount or premium, as amortizable Securities, and if payable in, convertible or exchangeable for commodities or for the securities of the Company.

All Securities of any one series need not be issued at the same time and may be issued from time to time, consistent with the terms of this Indenture, if so provided by or pursuant to the Board Resolution or Officer's Certificate referred to above or as set forth in a supplemental indenture, and, unless otherwise provided, the authorized principal amount of any series may be increased to provide for issuances of additional Securities of such series. If so provided by or pursuant to the Board Resolution or Officer's Certificate or supplemental indenture referred to above, the terms of such Securities to be issued from time to time may be determined as set forth in such Board Resolution, Officer's Certificate or supplemental indenture, as the case may be. All Securities of any one series shall be substantially identical except as to denomination, interest rate, maturity and other similar terms and except as may be provided otherwise by or pursuant to such Board Resolution, Officer's Certificate or supplemental indenture.

#### **SECTION 2.04. Securities in Global Form.**

If Securities of a series are issuable in global form, as specified as contemplated by Section 2.03(b), then, notwithstanding clause (11) of Section 2.03(b) and the provisions of Section 2.05, any such Security in global form shall represent such of the Securities of such series Outstanding as shall be specified therein, and any such Security in global form may provide that it shall represent the aggregate amount of Securities Outstanding from time to time endorsed thereon and that the aggregate amount of Securities Outstanding represented thereby may from time to time be reduced to reflect any exchanges of beneficial interests in such Security in global form for Securities of such series as contemplated herein. Any endorsement of a Security in global form to reflect the amount, or any decrease in the amount, of Securities Outstanding represented thereby shall be made by the Trustee or the Security Registrar in such manner and upon instructions given by such person or persons as shall be specified in such Security in global form or in the Company Order to be delivered to the Trustee pursuant to Section 2.06 or Section 2.08. Subject to the provisions of Section 2.06 and, if applicable, Section 2.08, the Trustee or the Security Registrar shall deliver and redeliver any Security in permanent global form in the manner and upon instructions given by the person or persons specified in such Security in global form or in the applicable Company Order. If a Company Order pursuant to Section 2.06 or Section 2.08 has been, or simultaneously is, delivered, any instructions by the Company with respect to endorsement or delivery or redelivery of a Security in global form shall be in writing but need not be represented by a Company Order and need not be accompanied by an Opinion of Counsel.

The provisions of the last sentence of Section 2.06 shall apply to any Security represented by a Security in global form if such Security was never issued and sold by the Company and the Company delivers to the Trustee or the Security Registrar the Security in global form together with written instructions (which need not be represented by a Company Order and need not be accompanied by an Opinion of Counsel) with regard to the reduction in the principal amount of Securities represented thereby, together with the written statement contemplated by the last sentence of Section 2.06.

Notwithstanding the provisions of Section 2.05, unless otherwise specified as contemplated by Section 2.03(b), payment of principal of and any premium and interest on any Security in permanent global form shall be made to the persons or persons specified therein.

#### **SECTION 2.05. Denominations; Record Date; Payment of Interest.**

(a) Unless otherwise provided as contemplated by Section 2.03(b) with respect to any series of Securities, any Registered Securities of a series shall be issuable without coupons in minimum denominations of \$1,000 and any Bearer Securities of a series shall be issuable, with interest coupons attached, in the minimum denomination of \$5,000.

(b) The term “record date” as used with respect to an interest payment date for any series of a Registered Security shall mean such day or days as shall be specified as contemplated by Section 2.03(b); provided, that in the absence of any such provisions with respect to any series, such term shall mean (1) the last day of the calendar month next preceding such interest payment date if such interest payment date is the 15th day of a calendar month; or (2) the 15th day of a calendar month next preceding such interest payment date if such interest payment date is the first day of the calendar month.

Unless otherwise provided as contemplated by Section 2.03 with respect to any series of Securities, the person in whose name any Registered Security is registered at the close of business on the record date with respect to an interest payment date shall be entitled to receive the interest payable on such interest payment date notwithstanding the cancellation of such Security upon any registration of transfer or exchange thereof subsequent to such record date prior to such interest payment date; provided, that if and to the extent the Company shall default in the payment of the interest due on such interest payment date, such defaulted interest shall be paid to the persons in whose names the Securities are registered on a subsequent record date established by notice given to the extent and in the manner set forth in Section 15.04 by or on behalf of the Company to the holders of Securities of the series in default not less than 15 days preceding such subsequent record date, such record date to be not less than five days preceding the date of payment of such defaulted interest, or in any other lawful manner acceptable to the Trustee.

(c) Unless otherwise specified by Board Resolution or Company Order for a particular series of Securities, the principal of, redemption premium, if any, on and interest, if any, on the Securities of any series shall be payable at the office or agency of the Company maintained pursuant to Section 4.02 in a Place of Payment for such series, in the coin or currency of the United States of America that at the time is legal tender for public and private debt; provided, that, at the option of the Company, payment of interest with respect to a Registered Security may be paid by check mailed to the holders of the Registered Securities entitled thereto at their last addresses as they appear on the Security Register or wired if held in book-entry form at the U.S. Depository.

#### **SECTION 2.06. Execution, Authentication, Delivery and Dating of Securities.**

The Securities shall be signed on behalf of the Company by its Chief Executive Officer or its Chief Financial Officer. Such signatures may be the manual or facsimile signatures of such then-current officers.

Coupons shall bear the facsimile signature of the Secretary or one of the Assistant Secretaries of the Company or such other officer of the Company as may be specified pursuant to Section 2.03(b). Any Security or coupon may be signed on behalf of the Company by such persons as, at the actual date of the execution of such Security, shall be the proper officers of the Company, although at the date of the execution of this Indenture any such person was not such officer. Securities and coupons bearing the manual or facsimile signatures of individuals who were, at the actual date of the execution of such Security or coupon, 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 the delivery of such coupons, as the case may be, or did not hold such offices at the date of such Securities.

Upon the execution and delivery of this Indenture, the Company shall deliver to the Trustee an Officer's Certificate as to the incumbency and specimen signatures of officers authorized to execute and deliver the Securities and coupons and give instructions under this Section and, as long as Securities are Outstanding under this Indenture, shall deliver a similar Officer's Certificate each year on the anniversary of the date of the first such Officer's Certificate. The Trustee may conclusively rely on the documents delivered pursuant to this Section (unless revoked by superseding comparable documents) and Section 2.03 hereof as to the authorization of the Board of Directors of any Securities delivered hereunder, and the form and terms thereof, and as to the authority of the instructing officers referred to in this Section so to act.

The Trustee shall at any time, and from time to time, authenticate Securities for original issue in an unlimited aggregate principal amount upon receipt by the Trustee of a Company Order; provided, that with respect to Securities of a series subject to a Periodic Offering, (a) such Company Order may be delivered to the Trustee prior to the delivery to the Trustee of such Securities for authentication and delivery, (b) the Trustee shall authenticate and deliver Securities of such series for original issue from time to time, in an aggregate principal amount not exceeding the aggregate principal amount, if any, established for such series, pursuant to a Company Order or pursuant to such procedures acceptable to the Trustee as may be specified from time to time by a Company Order, (c) the maturity date or dates, original issue date or dates, interest rate or rates and any other terms of Securities of such series shall be determined by Company Order or pursuant to such procedures, and (d) if provided for in such procedures, such Company Order may authorize authentication and delivery pursuant to oral or electronic instructions from the Company or its duly authorized agent or agents, which oral instructions shall be promptly confirmed in writing. Except as permitted by Section 2.09, the Trustee shall not authenticate and deliver any Bearer Security unless all appurtenant coupons for interest then matured have been detached and cancelled.

Prior to the issuance of a Security of any new series and any related coupons, and the authentication thereof by the Trustee, the Trustee shall have received and (subject to Section 7.02) shall be fully protected in relying on:

(a) The Board Resolution or Officer's Certificate or supplemental indenture establishing the terms and the form of the Securities of that series pursuant to Section 2.01 and Section 2.03;

(b) An Officer's Certificate stating that all conditions precedent provided for in this Indenture relating to the authentication and delivery of Securities in such form have been complied with; and

(c) An Opinion of Counsel stating that the form and terms of such Securities and coupons, if any, have been established in conformity with the provisions of this Indenture; provided, that with respect to Securities of a series subject to a Periodic Offering, the Trustee shall be entitled to receive such Opinion of Counsel only once at or prior to the time of the first authentication of Securities of such series.

With respect to Securities of a series offered in a Periodic Offering, the Trustee may rely, as to the authorization by the Company of any of such Securities, the form and terms thereof, any coupons and the legality, validity, binding effect and enforceability thereof, upon the Opinion of Counsel and other documents delivered pursuant to this Section in connection with the first authentication of Securities of such series unless and until such Opinion of Counsel or other documents have been superseded or revoked. In connection with the authentication and delivery of Securities of a series subject to a Periodic Offering, the Trustee shall be entitled to assume that the Company's instructions to authenticate and deliver such Securities do not violate any rules, regulations or orders of any governmental agency or commission having jurisdiction over the Company.

Each Registered Security shall be dated the date of its authentication except as otherwise provided by Board Resolution or Officer's Certificate or supplemental indenture; and each Bearer Security shall be dated as of the date of original issuance of the first Security of such series to be issued unless otherwise specified pursuant to Section 2.03 hereof.

The aggregate principal amount of Securities of any series outstanding at any time may not exceed any limit upon the maximum principal amount for such series set forth in or pursuant to the Board Resolution or Officer's Certificate or supplemental indenture delivered pursuant to Section 2.03, except as provided in Section 2.08.

No Security or coupon shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security, or the Security to which such coupon appertains, a certificate of authentication substantially in the form provided for herein executed by the Trustee by manual signature, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder. 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 2.10 together with a written statement stating that such Security has never been issued and sold by the Company, 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 2.07. Exchange and Registration of Transfer of Securities.**

(a) The Company shall keep, at an office or agency to be designated and maintained by the Company in accordance with Section 4.02 (as such, a "Security Registrar"), registry books (the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall register Registered Securities and shall register the transfer of Registered Securities of each such series as provided in this Article 2. Such Security Register shall be in written form or in any other form capable of being converted into written form within a reasonable time. At all reasonable times such Security Register shall be open for inspection by the Trustee. Upon due presentment for registration of transfer of any Registered Security of a particular series at such office or agency maintained pursuant to Section 4.02 for such purpose in a Place of Payment, the Company shall execute and register and the Trustee shall authenticate and make available for delivery in the name of the transferee or transferees a new Registered Security or Registered Securities of such series of any authorized denominations and for an equal aggregate principal amount and tenor.

(b) At the option of the holder, Registered Securities of any series may be exchanged for other Registered Securities of the same series of any authorized denominations and of an equal aggregate principal amount and tenor. Registered Securities to be exchanged shall be surrendered at any such office or agency maintained pursuant to Section 4.02 for such purpose in a Place of Payment, and the Company shall execute and register and the Trustee shall authenticate and make available for delivery in exchange therefor the Security or Securities that the securityholder making the exchange shall be entitled to receive. Registered Securities, including Registered Securities received in exchange for Bearer Securities, may not be exchanged for Bearer Securities, unless the Company otherwise expressly provides for the issuance, upon such terms and conditions as may be provided with respect to such series, by the Company of Registered Securities of a series that may be exchanged, at the option of the securityholder upon such conditions and limitations as may be specified by the Company, for Bearer Securities of such series.



At the option of the holder, Bearer Securities of any series may be exchanged for Registered Securities of the same series of any authorized denominations and of a like aggregate principal amount and tenor, upon surrender of the Bearer Securities to be exchanged at any such office or agency, with all unmatured coupons (except as provided below) and with all matured coupons in default appertaining thereto. If the holder of a Bearer Security is unable to produce any such unmatured coupon or coupons or matured coupon or coupons in default, such exchange may be effected if the Bearer Securities are accompanied by payment in funds acceptable to the Company in an amount equal to the face amount of such missing coupon or coupons, or the surrender of such missing coupon or coupons may be waived by the Company and the Trustee if there is furnished to them such security or indemnity as they may require to save each of them and any paying agent harmless. If thereafter the holder of such Securities shall surrender to any paying agent any such missing coupon in respect of which such a payment shall have been made, such holder shall be entitled to receive the amount of such payment; provided, that, except as otherwise provided in Section 4.02, interest represented by coupons shall be payable only upon presentation and surrender of those coupons at an office or agency located outside the United States and its Possessions. Notwithstanding the foregoing, in case a Bearer Security of any series is surrendered at any such office or agency in exchange for a Registered Security of the same series and like tenor after the close of business at such office or agency on (i) any record date and before the opening of business at such office or agency on the relevant interest payment date, or (ii) any special record date and before the opening of business at such office or agency on the related proposed date for payment of defaulted interest as set forth in Section 2.05, such Bearer Security shall be surrendered without the coupon relating to such interest payment date or proposed date for payment, as the case may be, and interest or defaulted interest, as the case may be, will not be payable on such interest payment date or proposed date for payment, as the case may be, in respect of the Registered Security issued in exchange for such Bearer Security, but will be payable only to the holder of such coupon when due in accordance with the provisions of this Indenture.

Whenever any Securities are so surrendered for exchange, the Company shall execute and register, and the Trustee shall authenticate and make available for delivery, the Securities which the holder making the exchange is entitled to receive.

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

All Registered Securities presented for registration of transfer or for exchange, redemption or payment, as the case may be, shall (if so required by the Company or the Trustee) be duly endorsed by, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company and the Trustee or the Security Registrar duly executed by, the holder thereof or his or her attorney duly authorized in writing.

No service charge shall be made for any exchange or registration of transfer 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 therewith, other than exchanges pursuant to the terms of this Indenture not involving any transfer.

The Company shall not be required (1) to exchange or register the transfer of Securities of any series to be redeemed for a period of 15 days next preceding any selection of such Securities to be redeemed, (2) to exchange or register the transfer of any Registered Security so selected, called or being called for redemption, except in the case of any such series to be redeemed in part the portion thereof not to be so redeemed, or (3) to exchange any Bearer Security so selected for redemption except that such a Bearer Security may be exchanged for a Registered Security of that series and of like tenor, provided that such Registered Security shall be simultaneously surrendered for redemption.

(d) Notwithstanding the foregoing, except as otherwise specified as contemplated by Section 2.03(b), any permanent global Security shall be exchangeable pursuant to this Section only as provided in this paragraph. If the beneficial owners of interests in a permanent global Security are entitled to exchange such interests for Securities of such series and of like tenor and principal amount of another authorized form and denomination, as specified as contemplated by Section 2.03(b), then without unnecessary delay but in any event not later than the earliest date on which such interests may be so exchanged, the Company shall deliver to the Trustee or the Security Registrar definitive Securities of that series in aggregate principal amount equal to the principal amount of such permanent global Security executed by the Company. On or after the earliest date on which such interests may be so exchanged, in accordance with instructions given by the Company to the Trustee or the Security Registrar and the U.S. Depositary (which instructions shall be in writing), such permanent global Security shall be surrendered from time to time by the U.S. Depositary, or such other depositary or U.S. Depositary, as the case may be, as shall be specified in the Company Order with respect thereto to the Trustee, as the Company's agent for such purpose, or to the Security Registrar, to be exchanged, in whole or in part, for definitive Securities of the same series without charge and the Trustee shall authenticate and make available for delivery in accordance with such instructions, in exchange for each portion of such permanent global Security, a like aggregate principal amount of definitive Securities of the same series of authorized denominations and of like tenor as the portion of such permanent global Security to be exchanged which (unless the Securities of the series are not issuable both as Bearer Securities and as Registered Securities, in which case the definitive Securities exchanged for the permanent global Security shall be issuable only in the form in which the Securities are issuable, as specified as contemplated by Section 2.03(b)), shall be in the form of Bearer Securities or Registered Securities, or any combination thereof, as shall be specified by the beneficial owner thereof; provided, that no such exchanges may occur for a period of 15 days next preceding any selection of Securities of that series and of like tenor for redemption; and provided further, that no Bearer Security delivered in exchange for a portion of a permanent global security shall be mailed or otherwise delivered to any location in the United States or its Possessions. Promptly following any such exchange in part, such permanent global Security should be returned by the Trustee or the Security Registrar to the U.S. Depositary, or such other depositary or U.S. Depositary referred to above in accordance with the instructions of the Company referred to above. If a Registered Security is issued in exchange for any portion of a permanent global Security after the close of business at the office or agency where such exchange occurs on (i) any record date and before the opening of business at such office or agency on the relevant interest payment date, or (ii) any special record date and before the opening of business at such office or agency on the related proposed date for payment of defaulted interest as provided in Section 2.05, interest or defaulted interest, as the case may be, will not be payable on such interest payment date or proposed date for payment, as the case may be, in respect of such Registered Security, but will be payable on such interest payment date or proposed date for payment, as the case may be, only to the person to whom interest in respect of such portion of such permanent global Security is payable in accordance with the provisions of this Indenture.

## **SECTION 2.08. Temporary Securities.**

Pending the preparation of definitive Securities of any series, the Company may execute and the Trustee shall, upon Company Order, authenticate and make available for delivery, temporary Securities of such series (typewritten, printed, lithographed or otherwise produced). Such temporary Securities, in any authorized denominations, shall be substantially in the form of the definitive Securities in lieu of which they are issued, in registered form or, if authorized, in bearer form with one or more or without coupons, in the form approved from time to time by or pursuant to a Board Resolution but with such omissions, insertions, substitutions and other variations as may be appropriate for temporary Securities, all as may be determined by the Company, but not inconsistent with the terms of this Indenture or any provision of applicable law. In the case of any series issuable as Bearer Securities, such temporary Securities shall be delivered only in compliance with the conditions set forth in Section 2.06 and may be in global form.

Except in the case of temporary Securities in global form (which shall be exchanged as hereinafter provided), if temporary Securities of any series are issued, the Company will cause definitive Securities of that series to be prepared without unreasonable delay. After the preparation of definitive Securities of such series, the temporary Securities of such series shall be exchangeable for definitive Securities of such series upon surrender of the temporary Securities of such series at the office or agency of the Company maintained pursuant to Section 4.02 in a Place of Payment for such series for the purpose of exchanges of Securities of such series, without charge to the holder. Upon surrender for cancellation of any one or more temporary Securities of any series (accompanied by any unmatured coupons appertaining thereto), the Company shall execute and the Trustee shall authenticate and make available for delivery in exchange therefor a like aggregate principal amount of definitive Securities of the same series and of like tenor of authorized denominations; provided, that, except as otherwise expressly provided by the Company as contemplated in Section 2.07(b), no definitive Bearer Security shall be delivered in exchange for a temporary Registered Security; and provided further, however, that a definitive Bearer Security shall be delivered in exchange for a temporary Bearer Security only in compliance with the conditions set forth in Section 2.06.

Without unnecessary delay but in any event not later than the date specified in, or determined pursuant to the terms of, any such temporary global Security of a series (the "Exchange Date"), the Company shall deliver to the Trustee definitive Securities of that series, in aggregate principal amount equal to the principal amount of such temporary global Security, executed by the Company. On or after the Exchange Date such temporary global Security shall be presented and surrendered by the U.S. Depositary to the Trustee, as the Company's agent for such purpose, or to the Security Registrar, to be exchanged, in whole or from time to time in part, for definitive Securities of such series without charge, and the Trustee shall authenticate and make available for delivery, in exchange for each portion of such temporary global Security, a like aggregate principal amount of definitive Securities of the same series of authorized denominations and of like tenor as the portion of such temporary global Security to be exchanged.

Every temporary Security shall be executed by the Company and shall be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with like effect, as the definitive Securities.

**SECTION 2.09. Mutilated, Destroyed, Lost or Stolen Securities and Coupons.**

If any mutilated Security or a Security with a mutilated coupon appertaining thereto is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and make available for delivery in exchange therefor a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously outstanding, with coupons corresponding to the coupons, if any, appertaining to the surrendered Security.

If there shall be delivered to the Company and the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Security or coupon and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Security or coupon has been acquired by a bona fide purchaser, the Company shall, subject to the following paragraph, execute and the Trustee shall authenticate and make available for delivery, in lieu of any such destroyed, lost or stolen Security or in exchange for the Security to which a destroyed, lost or stolen coupon appertains (with all appurtenant coupons not destroyed, lost or stolen), a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously outstanding, with coupons corresponding to the coupons, if any, appertaining to such destroyed, lost or stolen Security or to the Security to which such destroyed, lost or stolen coupon appertains.

In case any such mutilated, destroyed, lost or stolen Security or coupon 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 or coupon; provided, however, that principal of (and premium, if any, on) and any interest on Bearer Securities shall, except as otherwise provided in Section 4.02, be payable only at an office or agency located outside the United States and its Possessions.

Upon the issuance of any new Security under this Section, the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

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

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

**SECTION 2.10. Cancellation.**

All Securities surrendered for payment, redemption, exchange or registration of transfer or for credit against any sinking fund payment, as the case may be, and any coupons surrendered for payment, shall, if surrendered to the Company or any agent of the Company or of the Trustee, be delivered to the Trustee. All Registered Securities and matured coupons so delivered shall be promptly cancelled by the Trustee. All Bearer Securities and unmatured coupons so delivered shall be held by the Trustee, and upon instruction by a Company Order, shall be cancelled or held for reissuance. All Bearer Securities and unmatured coupons held by the Trustee pending such cancellation or reissuance shall be deemed to be delivered for cancellation for all purposes of this Indenture and the Securities. The Company may deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and may deliver to the Trustee (or to any other person for delivery to the Trustee) for cancellation any Securities previously authenticated hereunder which the Company has not issued and sold, and all Securities so delivered shall be promptly cancelled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section except as expressly provided by this Indenture. Any cancelled Securities and coupons held by the Trustee shall be delivered to the Company or disposed of (including by destruction of such Securities in accordance with the Trustee's customary procedures) as directed by the Company. Upon written request in the form of a Company Order, the Company may direct the Trustee to deliver a certificate of such disposal or destruction to the Company.

**SECTION 2.11. Book Entry Only System.**

If specified by the Company pursuant to Section 2.03(b) with respect to Securities represented by a Security in global form, a series of Securities may be issued initially in book-entry only form and, if issued in such form, shall be represented by one or more Securities in global form registered in the name of the U.S. Depositary or other depositary designated with respect thereto. So long as such system of registration is in effect, (a) Securities of such series so issued in book-entry only form will not be issuable in the form of or exchangeable for Securities in certificated or definitive registered form, (b) the records of the U.S. Depositary or such other depositary will be determinative for all purposes and (c) neither the Company, the Trustee nor any paying agent, Security Registrar or transfer agent for such Securities will have any responsibility or liability for (i) any aspect of the records relating to or payments made on account of owners of beneficial interests in the Securities of such series, (ii) maintaining, supervising or reviewing any records relating to such beneficial interests, (iii) receipt of notices, voting and requesting or directing the Trustee to take, or not to take, or consenting to, certain actions hereunder, or (iv) the records and procedures of the U.S. Depositary or such other depositary, as the case may be.

**ARTICLE 3**  
**REDEMPTION OF SECURITIES**

**SECTION 3.01. Redemption of Securities, Applicability of Section.**

Redemption of Securities of any series as permitted or required by the terms thereof shall be made in accordance with the terms of such Securities as specified pursuant to Section 2.03 hereof and this Article; provided, however, that if any provision of any series of Securities shall conflict with any provision of this Section, the provision of such series of Securities shall govern.

**SECTION 3.02. Notice of Redemption, Selection of Securities.**

In case the Company shall desire to exercise the right to redeem all or, as the case may be, any part of a series of Securities pursuant to Section 3.01, it shall fix a date for redemption. 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. The Company or the Trustee, as the case may be, shall give notice of such redemption, in the manner and to the extent set forth in Section 15.04, on that date prior to the date fixed for a redemption to the holders of such Securities so to be redeemed, as a whole or in part, (a) as set forth in a Board Resolution, as described in Section 2.03, or (b) as determined by the Chief Executive Officer or the Chief Financial Officer of the Company (each, an "Authorized Officer") and evidenced by the preparation of an offering document or an Officer's Certificate specifying the period of notice of such redemption. If the Board Resolutions or an Authorized Officer do not specify a period of notice of such redemption, the Company or the Trustee, as the case may be, shall give notice of such redemption, in the manner and to the extent set forth in Section 15.04, at least 10 Business Days and not more than 60 calendar days prior to the date fixed for a redemption to the holders of such Securities so to be redeemed as a whole or in part. Notice given in such manner shall be conclusively presumed to have been duly given, whether or not the holder receives such notice. In any case, failure to give such notice or any defect in the notice to the holder of any such Security designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other such Security. If the Company requests the Trustee to give any notice of redemption, it shall make such request at least 10 days prior to the designated date for delivering such notice, unless a shorter period is satisfactory to the Trustee.

Each such notice of redemption shall specify the date fixed for redemption, the redemption price at which such Securities are to be redeemed, the CUSIP numbers of such Securities, the Place of Payment where such Securities, together, in the case of Bearer Securities, with all coupons appertaining thereto, if any, maturing after the date of redemption, are to be surrendered for payment of the redemption prices, that payment will be made upon presentation and surrender of such Securities, that interest accrued to the date fixed for redemption will be paid as specified in the notice, and that on and after the date interest thereon or on the portions thereof to be redeemed will cease to accrue. If less than all of a series is to be redeemed, the notice of redemption shall specify the numbers of the Securities to be redeemed. In case any Security is to be redeemed in part only, the notice of redemption shall state the portion of the principal amount thereof to be redeemed and shall state that, upon surrender of such Security, a new Security or Securities of the same series in principal amount equal to the unredeemed portion thereof will be issued.

On or before the redemption date specified in the notice of redemption given as provided in this Section, the Company will deposit in trust with the Trustee or with one or more paying agents an amount of money sufficient to redeem on the redemption date all the Securities or portions of Securities so called for redemption at the appropriate redemption price, together with accrued interest, if any, to the date fixed for redemption. If less than all of a series of Securities is to be redeemed, the Company will give the Trustee adequate written notice at least 45 days in advance (unless a shorter notice shall be satisfactory to the Trustee) as to the aggregate principal amount of Securities to be redeemed.

If less than all the Securities of a series are to be redeemed, the Trustee shall select, pro rata, by lot or in such other manner as it shall deem appropriate and fair, not more than 60 days prior to the date of redemption, the numbers of such Securities Outstanding not previously called for redemption, to be redeemed in whole or in part. The portion of principal of Securities so selected for partial redemption shall be equal to the minimum authorized denomination for Securities of that series or any integral multiple thereof. The Trustee shall promptly notify the Company of the Securities to be redeemed. If, however, less than all the Securities of a series having differing issue dates, interest rates and stated maturities are to be redeemed, the Company in its sole discretion shall select the particular Securities of such series to be redeemed and shall notify the Trustee in writing at least 45 days prior to the relevant redemption date.

### **SECTION 3.03. Payment of Securities Called for Redemption.**

If notice of redemption has been given as above provided, the Securities or portions of Securities with respect to which such notice has been given shall become due and payable on the date and at the place stated in such notice at the applicable redemption price, together with any interest accrued to the date fixed for redemption, and on and after that date (unless the Company shall default in the payment of such Securities at the redemption price, together with interest accrued to that date) interest on such Securities or portions of Securities so called for redemption shall cease to accrue and the coupons, if any, for such interest appertaining to any Bearer Securities so to be redeemed, except to the extent provided below, shall be void. On presentation and surrender of such Securities subject to redemption at the Place of Payment and in the manner specified in such notice, together with all coupons, if any, appertaining thereto and maturing after the date specified in such notice for redemption, such Securities or the specified portions thereof shall be paid and redeemed by the Company at the applicable redemption price, together with interest accrued thereon to the date fixed for redemption; provided, that installments of interest on Bearer Securities whose stated maturity date is on or prior to the date of redemption shall be payable only at an office or agency located outside the United States and its Possessions (except as otherwise provided in Section 4.02) and, unless otherwise specified as contemplated by Section 2.03, only upon presentation and surrender of coupons for such interest; and provided further, that unless otherwise specified as contemplated by Section 2.03, installments of interest on Registered Securities whose stated maturity date is on or prior to the date of redemption shall be payable to the holders of such Registered 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 2.05.

At the option of the Company, payment with respect to Registered Securities may be made by check to the holders of such Securities or other persons entitled thereto against presentation and surrender of such Securities.

If any Bearer Security surrendered for redemption shall not be accompanied by all appurtenant coupons maturing after the date of redemption, such Security may be paid after deducting from the redemption price an amount equal to the face amount of all such missing coupons, or the surrender of such missing coupon or coupons may be waived by the Company and the Trustee if there is furnished to them such security or indemnity as they may require to save each of them and any paying agent harmless. If thereafter the holder of such Security shall surrender to the Trustee or any paying agent any such missing coupon in respect of which a deduction shall have been made from the redemption price, such holder shall be entitled to receive the amount so deducted; provided, that interest represented by coupons shall be payable only at an office or agency located outside the United States and its Possessions (except as otherwise provided in Section 4.02) and, unless otherwise specified as contemplated by Section 2.03, only upon presentation and surrender of those coupons.

Any Security (including any coupons appertaining thereto) that is to be redeemed only in part shall be surrendered at a Place of Payment therefor (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the holder thereof or such holder's attorney duly authorized in writing), and upon such presentation, the Company shall execute and the Trustee shall authenticate and make available for delivery to the holder thereof, at the expense of the Company, a new Security or Securities of the same series, of authorized denominations, in aggregate principal amount equal to the unredeemed portion of the principal of the Security so presented. If a temporary global Security or permanent global Security is so surrendered, such new Security so issued shall be a new temporary global Security or permanent global Security, respectively.

#### **SECTION 3.04. Redemption Suspended During Event of Default.**

The Trustee shall not redeem any Securities (unless all Securities then outstanding are to be redeemed) or commence the giving of any notice of redemption of Securities during the continuance of any Event of Default of which a Responsible Officer of the Trustee has actual knowledge or notice, except that where the giving of notice of redemption of any Securities shall theretofore have been made, the Trustee shall redeem such Securities, provided funds are deposited with it for such purpose. Except as aforesaid, any moneys theretofore or thereafter received by the Trustee shall, during the continuance of such Event of Default, be held in trust for the benefit of the securityholders and applied in the manner set forth in Section 6.06; provided, that in case such Event of Default shall have been waived as provided herein or otherwise cured, such moneys shall thereafter be held and applied in accordance with the provisions of this Article.



**ARTICLE 4**  
**PARTICULAR COVENANTS OF THE COMPANY**

**SECTION 4.01. Payment of Principal, Premium and Interest.**

The Company will duly and punctually pay or cause to be paid the principal of (and premium, if any, on) and any interest on each of the Securities of a series at the place, at the respective times and in the manner provided in the terms of the Securities, any coupons appertaining thereto and this Indenture. Unless otherwise specified as contemplated by Section 2.03(b) with respect to any series of Securities, any interest due on and any Additional Amounts payable in respect of Bearer Securities on or before maturity shall be payable only upon presentation and surrender of the several coupons for such interest installments as are evidenced thereby as they severally mature.

**SECTION 4.02. Offices for Notices and Payments, etc.**

If Securities of a series are issuable only as Registered Securities, the Company will maintain in each Place of Payment for such series 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. If Securities of a series are issuable as Bearer Securities, the Company will maintain (a) in the contiguous United States, an office or agency where any Registered Securities of that series may be presented or surrendered for payment, where any Registered Securities of that series may be surrendered for registration of transfer, where Securities of that series may be surrendered for exchange, where notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be served and where Bearer Securities of that series and related coupons may be presented or surrendered for payment in the circumstances described below (and not otherwise), (b) subject to any laws or regulations applicable thereto, in a Place of Payment for that series which is located outside the United States and its Possessions, an office or agency where Securities of that series and related coupons may be presented and surrendered for payment; provided, that if the Securities of that series are listed on The International Stock Exchange of the United Kingdom and the Republic of Ireland, Limited, the Luxembourg Stock Exchange or any other stock exchange located outside the United States and its Possessions and such stock exchange shall so require, the Company will maintain a paying agent for the Securities of that series in London, Luxembourg or any other required city located outside the United States and its Possessions, as the case may be, so long as the Securities of that series are listed on such exchange, and (c) subject to any laws or regulations applicable thereto, in a Place of Payment for that series which is located outside the United States and its Possessions, an office or agency where any Registered Securities of that series may be surrendered for registration of transfer, where Securities of that series may be surrendered for exchange and where notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be served.

The Company will give to the Trustee notice of the location of each such office or agency and of any change in the location thereof. In case the Company shall fail to maintain any such office or agency as required, or shall fail to give such notice of the location or of any change in the location thereof, presentations and surrenders of Securities of that series may be made and notices and demands may be served at the Corporate Trust Office of the Trustee, except that Bearer Securities of that series and the related coupons may be presented and surrendered for payment at any paying agent for such series located outside the United States and its Possessions.

No payment of principal, premium or interest on Bearer Securities shall be made at any office or agency of the Company in the United States or its Possessions or by check mailed to any address in the United States or its Possessions or by transfer to any account maintained with a financial institution located in the United States or its Possessions; provided, that, if the Securities of a series are denominated and payable in Dollars, payment of principal of (and premium, if any) and any interest on any Bearer Security shall be made at the office of the Company's paying agent in the contiguous United States, if (but only if) payment in Dollars of the full amount of such principal, premium, interest or Additional Amounts, as the case may be, at all offices or agencies outside the United States and its Possessions maintained for the purpose by the Company in accordance with this Indenture is illegal or effectively precluded by exchange controls or other similar restrictions.

The Company may also from time to time designate one or more other offices or agencies where the Securities of one or more series may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in accordance with the requirements set forth above for Securities of any series for such purposes. The Company will give prompt written notice to the Trustee and the holders of any such designation or rescission and of any change in the location of any such other office or agency.

The Company hereby initially designates the Corporate Trust Office as the office of the Company in the contiguous United States where Registered Securities may be presented for payment, for registration of transfer and for exchange as in this Indenture provided and where notices and demands to or upon the Company in respect of the Securities or of this Indenture may be served; provided that the Corporate Trust Office shall not be an office or agency of the Company for the service of legal process against the Company.

**SECTION 4.03. Provisions as to Paying Agent.**

(a) Whenever the Company shall appoint a paying agent other than the Trustee with respect to the Securities of any series, it will cause such paying agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section:

(1) that it will hold sums held by it as such agent for the payment of the principal of (and premium, if any, on) or any interest on the Securities of such series (whether such sums have been paid to it by the Company or by any other obligor on the Securities of such 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 and will notify the Trustee of the receipt of sums to be so held;

(2) that it will give the Trustee notice of any failure by the Company (or by any other obligor on the Securities of such series) to make any payment of the principal of (or premium, if any, on) or any interest on the Securities of such series when the same shall be due and payable; and

(3) that at any time when any such failure has occurred and is continuing, it will, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such paying agent.

(b) If the Company shall act as its own paying agent, it will, on or before each due date of the principal of (and premium, if any) or any interest on the Securities of any series, set aside, segregate and hold in trust for the benefit of the persons entitled thereto a sum sufficient to pay such principal (and premium, if any) or any interest so becoming due until such sums shall be paid to such persons or otherwise disposed of as herein provided. The Company will promptly notify the Trustee of any failure to take such action.

(c) Whenever the Company shall have one or more paying agents with respect to a series of Securities, it will, on or prior to each due date of the principal of (and premium, if any, on) or any interest on, any Securities, deposit with a paying agent a sum sufficient to pay the principal (and premium, if any) or any interest so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal, premium or interest, and (unless such paying agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

(d) Anything in this Section to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture with respect to one or more or all series of Securities hereunder, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust for such series by it or any paying agent hereunder as required by this Section, such sums to be held by the Trustee upon the trusts herein contained, 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) Anything in this Section to the contrary notwithstanding, the agreement to hold sums in trust as provided in this Section is subject to the provisions of Section 12.03 and Section 12.04.

#### **SECTION 4.04. Statement as to Compliance.**

The Company will deliver to the Trustee, within 120 days after the end of each fiscal year of the Company, commencing with the fiscal year ending in the year during which the first series of Securities is issued hereunder (but in no event more than one year from the issuance of the first series hereunder), a written statement signed by the Chief Executive Officer or other principal executive officer and by the Chief Financial Officer or other principal financial officer or principal accounting officer of the Company, stating, as to each signer thereof, that:

(a) a review of the activities of the Company during such year and of performance under this Indenture has been made under his or her supervision; and

(b) to the best of his or her knowledge, based on such review, the Company has fulfilled all its obligations under this Indenture throughout such year, or, if there has been a default in the fulfillment of any such obligation, specifying each such default known to him or her and the nature and status thereof.

#### **SECTION 4.05. Corporate Existence.**

Subject to the provisions of Article 11, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, rights (charter and statutory) and franchises and the corporate existence and rights (charter and statutory) and franchises of its Subsidiaries; provided, that except as set forth in Section 4.06 below, the Company shall not be required to, or to cause any Subsidiary to, preserve any right or franchise or to keep in full force and effect the corporate existence of any Subsidiary if the Company shall determine that the keeping in existence or preservation thereof is no longer desirable in or consistent with the conduct of the business of the Company.

#### **SECTION 4.06. Ownership of Material Subsidiary Stock.**

Except as otherwise specified with respect to a series of Securities in accordance with the provisions of Section 2.03 and subject to the provisions of Article 11, so long as any of the Securities are outstanding, the Company:

(a) will not, nor will it permit the Material Subsidiary to, directly or indirectly, sell, assign, pledge, transfer or otherwise dispose of any shares of, securities convertible into, or options, warrants or rights to subscribe for or purchase shares of, Voting Stock of the Material Subsidiary, nor will the Company permit the Material Subsidiary to issue any shares of, or securities convertible into, or options, warrants or rights to subscribe for or purchase shares of, Voting Stock of the Material Subsidiary if, in each case, after giving effect to any such transaction and to the issuance of the maximum number of shares of Voting Stock of the Material Subsidiary issuable upon the exercise of all such convertible securities, options, warrants or rights, the Company would cease to own, directly or indirectly, at least 80% of the issued and outstanding Voting Stock of the Material Subsidiary; and

(b) will not permit the Material Subsidiary to:

(1) merge or consolidate with or into any corporation or other Person, unless the Material Subsidiary is the surviving corporation or Person, or unless, upon consummation of the merger or consolidation, the Company will own, directly or indirectly, at least 80% of the surviving corporation's issued and outstanding Voting Stock;

(2) lease, sell, assign or transfer all or substantially all of its properties and assets to any Person (other than the Company), unless, upon such sale, assignment or transfer, the Company will own, directly or indirectly, at least 80% of the issued and outstanding Voting Stock of that Person; or

(3) pay any dividend in Voting Stock of a Material Subsidiary or make any other distribution in Voting Stock of a Material Subsidiary (other than to the Company), unless the Material Subsidiary to which the transaction relates, after obtaining any necessary regulatory approvals, unconditionally guarantees payment of the principal and any premium and interest on the Securities.

Notwithstanding the foregoing, any such sale, assignment, pledge or transfer of securities, any such merger or consolidation or any such lease, sale, assignment, pledge or transfer of properties and assets shall not be prohibited if: (A) required by law, such lease, sale, assignment or transfer of securities is made to any Person for the purpose of the qualification of such Person to serve as a director; (B) such lease, sale, assignment or transfer of securities is made by the Company or any of its Subsidiaries acting in a fiduciary capacity for any Person other than the Company or any Subsidiary; (C) made in connection with the consolidation of the Company with or the sale, lease or conveyance of all or substantially all of the assets of the Company to, or merger of the Company with or into any other Person (as to which Article 11 of this Indenture shall apply); or (D) required as a condition imposed by any law or any rule, regulation or order of any governmental agency or authority to the acquisition by the Company, directly or indirectly, through purchase of stock or assets, merger, consolidation or otherwise, of any Person; provided, that, in the case of clause (D) only, after giving effect to such disposition and acquisition, (x) at least 80% of the issued and outstanding Voting Stock of such Person will be owned, directly or indirectly, by the Company and (y) the consolidated assets of the Company will be at least equal to 70% of the consolidated assets of the Company prior thereto; and nothing in this Section 4.06 shall prohibit the Company or the Material Subsidiary from the sale or transfer of assets pursuant to any securitization transaction or the pledge of any assets to secure borrowings incurred in the ordinary course of business, including, without limitation, deposit liabilities, mortgage escrow funds, reverse repurchase agreements, Federal Home Loan Bank, recourse obligations incurred in connection with the Material Subsidiary's lending activities and letters of credit.

#### **SECTION 4.07. Waiver of Covenants.**

The Company may omit in any particular instance to comply with any covenant or condition set forth herein if before or after the time for such compliance the holders of a majority in principal amount of the Securities of all series affected thereby then Outstanding shall either waive such compliance in such instance or generally waive compliance with such covenant or condition, but no such waiver shall extend to or affect such covenant or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such covenant or condition shall remain in full force and effect.

### **ARTICLE 5 SECURITYHOLDER LISTS AND REPORTS BY THE COMPANY AND THE TRUSTEE**

#### **SECTION 5.01. Securityholder Lists.**

The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee as the Trustee may request in writing, a list, in such form and as of such date as the Trustee may reasonably require, of all information in the possession or control of the Company as to the names and addresses of the holders of Registered Securities of a particular series specified by the Trustee; provided, that if and so long as the Trustee shall be the Security Registrar with respect to such series, such list shall not be required to be furnished.

**SECTION 5.02. Preservation and Disclosure of Lists.**

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the holders of each series of Securities contained in the most recent list furnished to it as provided in Section 5.01 or received by the Trustee in its capacity as Security Registrar. The Trustee may destroy any list furnished to it as provided in Section 5.01 upon receipt of a new list so furnished.

(b) Securityholders may communicate as provided in Section 312(b) of the Trust Indenture Act with other securityholders with respect to their rights under this Indenture or under the Securities. The Company, the Trustee, the Security Registrar and anyone else shall have the protection of Section 312(c) of the Trust Indenture Act with respect to the sending of any material pursuant to a request made pursuant to Section 312(b) of the Trust Indenture Act.

**SECTION 5.03. Reports by the Company.**

The Company covenants so long as Securities are Outstanding:

(a) to file with the Trustee, within 15 days after the Company is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) that the Company may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act; or, if the Company is not required to file information, documents or reports pursuant to either of such sections, then to file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports that may be required pursuant to Section 13 of the Exchange Act in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations;

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

(c) to transmit by mail to all the holders of Registered Securities of each series, as the names and addresses of such holders appear on the registry books, within 30 days after the filing thereof with the Trustee, such summaries of any information, documents and reports required to be filed by the Company with respect to each such series pursuant to subsections (a) and (b) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

**SECTION 5.04. Reports by the Trustee.**

(a) On or about [\_\_\_\_\_, \_\_\_\_\_], so long as any Securities are outstanding hereunder and if there has been any change in the following, the Trustee shall transmit by mail, first class postage prepared, to the securityholders, as their names appear upon the Security Register, a brief report dated as of the preceding [\_\_\_\_\_, \_\_\_\_\_], if and to the extent required under Section 313(a) of the Trust Indenture Act, detailing certain events that occurred within the previous 12 months.

(b) The Trustee shall comply with Sections 313(b) and 313(c) of the Trust Indenture Act.

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

## **ARTICLE 6 REMEDIES**

### **SECTION 6.01. Events of Default; Acceleration of Maturity.**

In case one or more of the following Events of Default with respect to a particular series shall have occurred and be continuing:

(a) default in (i) the payment of the principal of (or premium, if any, on) any of the Securities of such series as and when the same shall become due and payable either at maturity, upon redemption, by declaration or otherwise or (ii) any payment required by any sinking or analogous fund established with respect to that series;

(b) default in the payment of any installment of interest upon any of the Securities of such series as and when the same shall become due and payable, and continuance of such default for a period of 90 days;

(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 contained in the Securities 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, or to the Company and the Trustee by the holders of at least 25% in aggregate principal amount of the Securities of that series at the time Outstanding;

(d) a court having jurisdiction in the premises shall enter a decree or order for relief in respect of the Company or the Material Subsidiary in an involuntary case or proceeding under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Company or any Material Subsidiary or for any substantial part of their respective property, or ordering the winding-up or liquidation of its affairs and such decree or order shall remain unstayed and in effect for a period of 60 consecutive days;

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

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

then, if an Event of Default described in clause (a), (b), (c) or (f) shall have occurred and be continuing, and in each and every such case, unless the principal amount of all the Securities of such series shall have already become due and payable, either the Trustee or the holders of not less than 25% in aggregate principal amount of the Securities of that series then Outstanding hereunder, by notice in writing to the Company (and to the Trustee if given by securityholders) may declare the principal amount of all the Securities (or, with respect to Original Issue Discount Securities, such lesser amount as may be specified in the terms of such Securities) of that series to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Securities of such series contained to the contrary notwithstanding; or, if an Event of Default described in clause (d) or (e) shall have occurred and be continuing, and in each and every such case, unless the principal of all the Securities of such series shall have already become due and payable, the principal amount of all the Securities (or, with respect to Original Issue Discount Securities, such lesser amount as may be specified in the terms of such Securities) shall be automatically deemed immediately due and payable.

#### **SECTION 6.02. Rescission and Annulment.**

The provisions in Section 6.01 are subject to the condition that if, at any time after the principal of the Securities of any one or more of all series, as the case may be, shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay all matured installments of interest upon all the Securities of such series or of all the Securities, as the case may be, and the principal of (and premium, if any, on) all Securities of such series or of all the Securities, as the case may be (or, with respect to Original Issue Discount Securities, such lesser amount as may be specified in the terms of such Securities), which shall have become due otherwise than by acceleration (with interest upon such principal and premium, if any) and, to the extent that payment of such interest is enforceable under applicable law, on overdue installments of interest, at the same rate as the rate of interest specified in the Securities of such series or all Securities, as the case may be (or, with respect to Original Issue Discount Securities, at the rate specified in the terms of such Securities for interest on overdue principal thereof upon maturity, redemption or acceleration of such series, as the case may be), to the date of such payment or deposit, and such amount as shall be sufficient to cover reasonable compensation to the Trustee, its agents, attorneys and counsel, and all other expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its negligence, bad faith or willful misconduct, and any and all defaults under the Indenture, other than the non-payment of the principal of Securities that has become due by acceleration, shall have been remedied; then and in every such case the holders of a majority in aggregate principal amount of the Securities of such series (or of all the Securities, as the case may be) then Outstanding, by written notice to the Company and to the Trustee, may waive all defaults with respect to that series or with respect to all Securities, as the case may be in such case, treated as a single class and rescind and annul such declaration and its consequences; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent default or shall impair any right consequent thereon.



In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned because of such rescission and annulment or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Company, the Trustee and the securityholders, as the case may be, shall be restored respectively to their former positions and rights hereunder, and all rights, remedies and powers of the Company, the Trustee and the securityholders, as the case may be, shall continue as though no such proceedings had been taken.

**SECTION 6.03. Collection of Indebtedness and Suits for Enforcement by Trustee.**

The Company covenants that if:

(a) default is made in the payment of any installment of interest on any Security when such interest becomes due and payable and such default continues for a period of 90 days,

(b) default is made in the payment of the principal or premium, if any, of any Security at the maturity thereof, including any maturity occurring by reason of a call for redemption or otherwise, or

(c) default is made in the deposit of any sinking fund payment when and as due by the terms of a Security,

the Company will, upon demand of the Trustee, pay to it, for the benefit of the holders of such Securities and any coupons appertaining thereto, the whole amount that shall have become due and payable on such Securities and coupons for principal or premium, if any, and interest, with interest upon the overdue principal and, to the extent that payment of such interest shall be legally enforceable, upon overdue installments of interest, at the rate borne by such Securities; and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

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

If an Event of Default occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the securityholders 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 6.04. Trustee May File Proofs of Claim.**

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

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

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

and any receiver, assignee, trustee, liquidator or sequestrator (or other similar official) in any such judicial proceeding is hereby authorized by each holder of Securities and coupons to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the holders of Securities and coupons, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.06. To the extent that such payment of reasonable compensation, expenses, disbursements, advances and other amounts out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, moneys, securities and other property which the holders of the Securities and coupons may be entitled to receive in such proceedings, whether in liquidation or under any plan or reorganization or arrangements or otherwise.

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

**SECTION 6.05. Trustee May Enforce Claims Without Possession of Securities or Coupons.**

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

**SECTION 6.06. Application of Money Collected.**

Any money collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal or premium, if any, or any interest, upon presentation of the Securities or coupons, or both, as the case may be, and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee under Section 7.06;

SECOND: To the payment of all senior Indebtedness of the Company if and to the extent required by Article 16;

THIRD: To the payment of the amounts then due and unpaid upon the Securities for principal of and premium, if any, and any interest on the Securities and coupons, in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities and coupons, for principal and any interest, respectively; and

FOURTH: To the Company or its successors or assigns, or to whomsoever may be lawfully entitled to receive the same.

**SECTION 6.07. Limitation on Suits.**

No holder of any Security of any series or any related coupons shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

(1) such holder has previously given written notice to the Trustee of a continuing Event of Default;

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

(3) such holder or holders have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;

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

(5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the holders of a majority in aggregate principal amount of the Outstanding Securities;

it being understood and intended that no one or more such holders of Securities shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other of such holders 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 of Securities.

**SECTION 6.08. Unconditional Right of Securityholders to Receive Principal and Interest.**

Notwithstanding any other provision in this Indenture, the holder of any Security or coupon shall have the right, which is absolute and unconditional, to receive payment of the principal of and premium, if any, and (subject to Section 2.05 and Section 3.02) any interest on such Security or payment of such coupon on the respective stated maturities expressed in such Security or coupon (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.

**SECTION 6.09. Restoration of Rights and Remedies.**

If the Trustee or any holder of a Security or coupon 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 or to such holder, then and in every such case the Company, the Trustee and the holders of Securities and coupons shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Trustee and the holders shall continue as though no such proceeding has been instituted.

**SECTION 6.10. Rights and Remedies Cumulative.**

Except as provided in Section 2.09, no right or remedy herein conferred upon or reserved to the Trustee or to the holders of Securities or coupons 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 6.11. Delay or Omission Not Waiver.**

No delay or omission of the Trustee or of any holder of any Security or coupon to exercise any right or remedy accruing upon any Default shall impair any such right or remedy or constitute a waiver of any such Default or any acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the holders of Securities or coupons may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the holders of Securities or coupons, as the case may be.

### **SECTION 6.12. Control by Securityholders.**

The holders of a majority in principal amount of Outstanding Securities of each 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, provided that:

(1) such direction shall not be in conflict with any statute, rule of law or with this Indenture;

(2) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction; and

(3) the Trustee need not take any action which it in good faith determines might involve it in personal liability or be unjustly prejudicial to the securityholders not consenting.

Upon receipt by the Trustee of any such direction with respect to Securities of a series all or part of which is represented by a temporary global Security or a permanent global Security, the Trustee shall establish a record date for determining holders of Outstanding Securities of such series entitled to join in such direction, which record date shall be at the close of business on the day the Trustee receives such direction. The holders on such record date, or their duly designated proxies, and only such persons, shall be entitled to join in such direction, whether or not such holders remain holders after such record date; provided that, unless such majority in principal amount shall have been obtained prior to the day which is 90 days after such record date, such direction shall automatically and without further action by any holder be cancelled 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 direction identical to a direction which has been cancelled 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 6.12.

### **SECTION 6.13. Waiver of Past Defaults.**

The holders of a majority in principal amount of the Securities of each series at the time Outstanding may, on behalf of the holders of all the Securities of that series and any coupons appertaining thereto, waive any past default hereunder and its consequences, except a default:

(1) in the payment of the principal of, premium, if any, or any interest on any Security;

(2) described in clauses (d) or (e) of Section 6.01; or

(3) in respect of a covenant or provision hereof that pursuant to Article 10 cannot be modified or amended without the consent of the holder of each Outstanding Security affected.

Upon any such waiver, such 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 Indenture, but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

#### **SECTION 6.14. Undertaking for Costs.**

All parties to this Indenture agree, and each holder of any Security or coupon by his or her acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Trustee, to any suit instituted by any holder, or group of holders, holding in the aggregate more than 10% in principal amount of the Outstanding Securities of any series, or to any suit instituted by any holder of any Securities or coupons for the enforcement of the payment of the principal of, premium, if any, or any interest on any Security or the payment of any coupon on or after the respective stated maturities expressed in such Security or coupon (or, in the case of redemption, on or after the redemption date, except, in the case of a partial redemption, with respect to the portion not so redeemed).

#### **SECTION 6.15. Waiver of Stay or Extension Laws.**

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension laws 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 benefits or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

### **ARTICLE 7 CONCERNING THE TRUSTEE**

#### **SECTION 7.01. Duties and Responsibilities of Trustee.**

(a) The Trustee, prior to the occurrence of an Event of Default of a particular series and after the curing of all Events of Default of such series which may have occurred, undertakes to perform such duties and only such duties with respect to such series as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee. In the absence of bad faith on the part of the Trustee, the 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 Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture.

(b) In case an Event of Default with respect to a particular series has occurred (which has not been cured), the Trustee shall exercise with respect to such series such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

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

(1) prior to the occurrence of an Event of Default with respect to a particular series and after the curing of all Events of Default with respect to such series which may have occurred, the duties and obligations of the Trustee with respect to such series shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee;

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

(3) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of Securities pursuant to Section 6.12 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.

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

**SECTION 7.02. Reliance on Documents, Opinions, etc.**

Subject to the provisions of Section 7.01:

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

(b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order (unless other evidence in respect thereof be herein specifically prescribed); and any Board Resolution may be evidenced to the Trustee by a copy thereof certified by the Secretary or any Assistant Secretary of the Company; and 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 Officer's Certificate;

(c) the Trustee may consult with counsel and the written advice of such counsel and 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;

(d) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the holders of any Securities or any related coupons pursuant to the provisions of this Indenture, unless such holders shall have offered to the Trustee security or indemnity reasonably satisfactory to the Trustee against the losses, costs, expenses and liabilities which might be incurred therein or thereby;

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

(f) 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;

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

(h) in no event shall the Trustee be liable to any person for special, punitive, indirect, consequential or incidental loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action; and

(i) the Trustee shall not be required to give any bond or surety in respect of the execution of the trusts and powers or otherwise in respect of the Indenture.

**SECTION 7.03. No Responsibility for Recitals, etc.**

The recitals contained herein and in the Securities, other than the Trustee's certificate of authentication, and in any coupons shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities or coupons, provided that the Trustee shall not be relieved of its duty to authenticate Securities only as authorized by this Indenture. The Trustee shall not be accountable for the use or application by the Company of Securities or the proceeds thereof.



#### **SECTION 7.04. Ownership of Securities.**

The Trustee, any authenticating agent, any paying agent, any Security Registrar or any other agent of the Company or of the Trustee, in its individual or any other capacity, may become the owner or pledgee of Securities and coupons with the same rights it would have if it were not Trustee, authenticating agent, paying agent, Security Registrar or such other agent of the Company or of the Trustee.

#### **SECTION 7.05. Moneys to be Held in Trust.**

Subject to the provisions of Section 12.04 hereof, all moneys received by the Trustee or any paying agent shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by law. Neither the Trustee nor any paying agent shall be under any liability for interest on any moneys received by it hereunder except such as it may agree in writing with the Company to pay thereon.

#### **SECTION 7.06. Compensation and Expenses of Trustee.**

The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, such compensation for all services rendered by it hereunder as the Company and the Trustee shall from time to time agree in writing (which to the extent permitted by law shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust), and, except as otherwise expressly provided, the Company will pay or reimburse the Trustee forthwith upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and of all persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its negligence, bad faith or willful misconduct. If any property other than cash shall at any time be subject to the lien of this Indenture, the Trustee, if and to the extent authorized by a receivership or bankruptcy court of competent jurisdiction or by the supplemental instrument subjecting such property to such lien, shall be entitled to make and to be reimbursed for, advances for the purpose of preserving such property or of discharging tax liens or other prior liens or encumbrances thereon. The Company also covenants to indemnify the Trustee for, and to hold it harmless against, any and all loss, damage, claims, liability or expense, including taxes (other than taxes based upon, measured or determined by, the income of the Trustee) incurred without negligence, bad faith or willful misconduct on the part of the Trustee, arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of defending itself against any claim of liability and enforcing the provisions of this Section 7.06. The obligations of the Company under this Section shall constitute additional indebtedness hereunder. Such additional indebtedness shall be secured by a lien prior to that of the Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the holders of particular Securities.

To secure the Company's obligations under this Section, the Trustee shall have a senior claim to which the Securities are hereby made subordinate on all money or property held or collected by the Trustee, except that held in trust to pay principal of (and premium, if any) and interest, if any, on particular Securities.

When the Trustee incurs expenses or renders services after an Event of Default, the expenses and the compensation for the services are intended to constitute expenses of administration under any bankruptcy law.

The Company's obligations under this Section 7.06 shall survive satisfaction and discharge of the Indenture, payment of the Securities and any resignation or removal of the Trustee hereunder.

**SECTION 7.07. Officer's Certificate as Evidence.**

Subject to the provisions of Section 7.01, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action to be taken hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence, bad faith or willful misconduct on the part of the Trustee, be deemed to be conclusively proved and established by an Officer's Certificate delivered to the Trustee, and such certificate, in the absence of negligence, bad faith or willful misconduct on the part of the Trustee, shall be full warrant to the Trustee for any action taken, suffered or omitted by it under the provisions of this Indenture upon the faith thereof.

**SECTION 7.08. Disqualifications; Conflicting Interest of Trustee.**

If the Trustee has or shall acquire any "conflicting interest" within the meaning of the Trust Indenture Act, the Trustee and the Company shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act.

**SECTION 7.09. Eligibility of Trustee.**

There shall at all times be a Trustee hereunder which shall be a corporation organized and doing business under the laws of the United States or of any State or Territory thereof or of the District of Columbia, which (a) is authorized under such laws to exercise corporate trust powers, (b) is subject to supervision or examination by federal, state, territorial or District of Columbia authority, (c) shall have at all times a combined capital and surplus of not less than \$50,000,000 and (d) shall not be the Company or any person directly or indirectly controlling, controlled by or under common control with the Company. If such corporation publishes reports of condition at least annually, pursuant to law, or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation at any time shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, the Trustee shall resign immediately in the manner and with the effect specified in Section 7.10.

## **SECTION 7.10. Resignation or Removal of Trustee.**

(a) The Trustee, or any trustee or trustees hereafter appointed, may at any time resign with respect to one or more or all series by giving written notice of resignation to the Company. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee with respect to the applicable series by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within 30 days after the mailing of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any of the following shall occur:

(1) the Trustee shall fail to comply with the provisions of Section 310(b) of the Trust Indenture Act, as specified in Section 7.08 with respect to any series of Securities after written request therefor by the Company or by any securityholder who has been a bona fide holder of a Security or Securities of such series for at least six months,

(2) the Trustee shall cease to be eligible in accordance with the provisions of Section 7.09 with respect to any series of Securities and shall fail to resign after written request therefor by the Company or by any such securityholder, or

(3) the Trustee shall become incapable of acting with respect to any series of Securities, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, then, in any such case, the Company may remove the Trustee with respect to the applicable series of Securities and appoint a successor trustee with respect to such series by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 6.14, any securityholder of such series who has been a bona fide holder of a Security or Securities of the applicable series for at least six months may, on behalf of himself or herself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee with respect to such series. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The holders of a majority in aggregate principal amount of the Securities of all series (voting as one class) at the time Outstanding may at any time remove the Trustee with respect to Securities of all series and appoint a successor trustee with respect to the Securities of all series.

(d) Any resignation or removal of the Trustee and any appointment of a successor trustee pursuant to any of the provisions of this Section shall become effective upon the appointment of a successor trustee and the acceptance of appointment by the successor trustee as provided in Section 7.11.

#### **SECTION 7.11. Acceptance by Successor Trustee.**

Any successor trustee appointed as provided in Section 7.10 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee with respect to all or any applicable series shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations with respect to such series of its predecessor hereunder, with like effect as if originally named as trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the predecessor trustee shall, upon payment of any amounts then due it pursuant to the provisions of Section 7.06, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the predecessor trustee. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing in order more fully and certainly to vest in and confirm to such successor trustee all such rights and powers. Any trustee, including the initial Trustee, ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such trustee to secure any amounts then due it pursuant to the provisions of Section 7.06.

In case of the appointment hereunder of a successor trustee with respect to the Securities of one or more (but not all) series, the Company, the predecessor Trustee and each successor trustee with respect to the Securities of any applicable series shall execute and deliver a supplemental indenture which shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the predecessor Trustee with respect to the Securities of any series as to which the predecessor Trustee is not retiring shall continue to be vested in the predecessor Trustee, and shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such trustees co-trustees of the same trust and that each such trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such trustee.

No successor trustee shall accept appointment as provided in this Section unless at the time of such acceptance such successor trustee shall be qualified and eligible under the provisions of this Article 7.

Upon acceptance of appointment by a successor trustee as provided in this Section, the Company shall mail notice of the succession of such trustee hereunder to all holders of Securities of any applicable series as the names and addresses of such holders shall appear on the registry books. If the Company fails to mail such notice in the prescribed manner within 10 days after the acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be so mailed at the expense of the Company.

#### **SECTION 7.12. Successor by Merger, etc.**

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder; provided such corporation shall be qualified and eligible under the provisions of this Article 7, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

**SECTION 7.13. Limitations on Rights of Trustee as Creditor.**

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

**SECTION 7.14. Notice of Default.**

Within 90 days after the occurrence of any default on a series of Securities hereunder, the Trustee shall transmit to all securityholders of that series, in the manner and to the extent provided in Section 15.04, notice of such default hereunder known to the Trustee, unless such default shall have been cured or waived; provided, that except in the case of a default in the payment of the principal of or interest on any Security or on the payment of any sinking or purchase fund installment, the Trustee shall be protected in withholding such notice if and so long as the Trustee in good faith determines that the withholding of such notice is in the interests of the securityholders; and provided, further, that in the case of any default of the character specified in clause (c) of Section 6.01 no such notice to securityholders shall be given until at least 30 days after the occurrence thereof. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to Securities of such series.

**SECTION 7.15. Appointment of Authenticating Agent.**

The Trustee may appoint an authenticating agent or agents (which may be an affiliate or affiliates of the Company) 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 or upon exchange, registration of transfer or partial redemption thereof or pursuant to Section 2.09, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an authenticating agent and a certificate of authentication executed on behalf of the Trustee by an authenticating agent. Each authenticating agent shall be acceptable to the Company and shall at all times be a corporation organized and doing business under the laws of the United States of America or of any State or Territory thereof or of the District of Columbia, which (a) is authorized under such laws to exercise corporate trust powers or to otherwise act as authenticating agent, (b) is subject to supervision or examination by federal, state, territorial or District of Columbia authority, and (c) shall have at all times a combined capital and surplus of not less than \$50,000,000. If such authenticating agent publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such authenticating agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an authenticating agent shall cease to be eligible in accordance with the provisions of this Section, such authenticating agent shall resign immediately in the manner and with the effect specified in this Section.

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

An authenticating agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an authenticating agent by giving written notice thereof to such authenticating agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such authenticating agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee may appoint a successor authenticating agent which shall be acceptable to the Company and shall promptly give notice of such appointment to all holders of Securities in the manner and to the extent provided in Section 15.04. Any successor authenticating agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an authenticating agent. No successor authenticating agent shall be appointed unless eligible under the provisions of this Section.

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

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

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

[ ],

as Trustee

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

If all of the Securities of a series may not be originally issued at one time, and the Trustee does not have an office capable of authenticating Securities upon original issuance located in a Place of Payment where the Company wishes to have Securities of such series authenticated upon original issuance, the Trustee, if so requested by the Company in writing, shall appoint in accordance with this Section an authenticating agent (which, if so requested by the Company, shall be such affiliate of the Company) having an office in a Place of Payment designated by the Company with respect to such series of Securities, provided that the terms and conditions of such appointment are acceptable to the Trustee.

## **ARTICLE 8 CONCERNING THE SECURITYHOLDERS**

### **SECTION 8.01. Action by Securityholders.**

Whenever in this Indenture it is provided that the holders of a specified percentage in aggregate principal amount of the Securities of any or all series may take any action (including the making of any demand or request, the giving of any authorization, notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action the holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by securityholders in person or by agent or proxy appointed in writing, (b) if Securities of a series are issuable as Bearer Securities, by the record of the holders of Securities voting in favor thereof, either in person or by proxies duly appointed in writing, at any meeting of securityholders of such series duly called and held in accordance with the provisions of Article 9, or (c) by a combination of such instrument or instruments and any such record of such a meeting of securityholders.

In determining whether the holders of a specified percentage in aggregate principal amount of the Securities of any or all series have taken any action (including the making of any demand or request, the giving of any authorization, direction, notice, consent or waiver or the taking of any other action), (i) the principal amount of any Original Issue Discount Security that may be counted in making such determination and that shall be deemed to be outstanding for such purposes shall be equal to the amount of the principal thereof that could be declared to be due and payable upon an Event of Default pursuant to the terms of such Original Issue Discount Security at the time the taking of such of such action is evidenced to the Trustee, and (ii) the principal amount of a Security denominated in a foreign currency or currency unit shall be the U.S. dollar equivalent, determined as of the date of original issuance of such Security in accordance with Section 2.03(b) hereof, of the principal amount of such Security.

### **SECTION 8.02. Proof of Execution by Securityholders.**

Subject to the provisions of Section 7.01, Section 7.02 and Section 9.05, proof of the execution of any instrument by a securityholder or its agent or proxy, or of the holding by any person of a Security, shall be sufficient and conclusive in favor of the Trustee and the Company if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee.

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

The record of any securityholders' meeting shall be proved in the manner provided in Section 9.06.

### **SECTION 8.03. Who Are Deemed Absolute Owners.**

Prior to due presentment of a Registered Security for registration of transfer, the Company, the Trustee and any agent of the Company or of the Trustee may deem the person in whose name such Registered Security shall be registered upon the Security Register to be, and may treat him as, the absolute owner of such Registered Security (whether or not such Security shall be overdue and notwithstanding any notation of ownership or other writing thereon), for the purpose of receiving payment of or on account of the principal of (and premium, if any) and, subject to the provisions of Section 2.05, any interest on such Security and for all other purposes; and neither the Company nor the Trustee nor any agent of the Company or of the Trustee shall be affected by any notice to the contrary. All such payments so made to any holder for the time being, or upon his or her order, shall be valid and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for moneys payable upon any such Security.

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

Notwithstanding the foregoing, with respect to any temporary or permanent global Security, nothing herein shall prevent the Company, the Trustee, or any agent of the Company or of the Trustee, from giving effect to any written certification, proxy or other authorization furnished by a U.S. Depositary, or impair, as between a U.S. Depositary and holders of beneficial interests in any temporary or permanent global Security, as the case may be, the operation of customary practices governing the exercise of the rights of the U.S. Depositary as holder of such temporary or permanent global Security.



#### **SECTION 8.04. Company-Owned Securities Disregarded.**

In determining whether the holders of the required aggregate principal amount of Securities have provided any request, demand, authorization, notice, direction, consent or waiver under this Indenture, Securities which are owned by the Company or any other obligor on the Securities, or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any other obligor on the Securities, shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, except that for the purpose of determining whether the Trustee shall be protected in relying on any such request, demand, authorization, direction, notice, consent or waiver, only Securities which the Trustee knows are so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding for the purposes of this Section if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Securities and that the pledgee is not a person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any such other obligor. In the case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall provide full protection to the Trustee.

#### **SECTION 8.05. Revocation of Consents; Future Securityholders Bound.**

At any time prior to the taking of any action by the holders of the percentage in aggregate principal amount of the Securities specified in this Indenture in connection with such action, any holder of a Security, the identifying number of which is shown by the evidence to be included in the Securities the holders of which have consented to such action, may, by filing written notice with the Trustee at its office and upon proof of holding as provided in Section 8.02, revoke such action so far as concerns such Security. Except as aforesaid any such action taken by the holder of any Security shall be conclusive and binding upon such holder and upon all future holders and owners of such Security and of any Security issued upon registration of transfer of or in exchange or substitution therefor in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, irrespective of whether or not any notation in regard thereto is made upon such Security. Any action taken by the holders of the percentage in aggregate principal amount of the Securities specified in this Indenture in connection with such action shall be conclusively binding upon the Company, the Trustee and the holders of all the Securities.

#### **SECTION 8.06. Record Date.**

The Company may, but shall not be obligated to, set a record date for purposes of determining the identity of holders of Securities of any series entitled to vote or consent to any action by vote or consent or to otherwise take any action under this Indenture authorized or permitted by Section 6.12 and Section 6.13 or otherwise under this Indenture. Such record date shall be the later of (i) the date 20 days prior to the first solicitation of such consent or vote or other action and (ii) the date of the most recent list of holders of such Securities delivered to the Corporate Trust Office of the Trustee pursuant to Section 5.01 prior to such solicitation. If such a record date is fixed, those persons who were holders of such Securities at the close of business on such record date shall be entitled to vote or consent or take such other action, or to revoke any such action, whether or not such persons continue to be holders after such record date, and for that purpose the Outstanding Securities shall be computed as of such record date.

**ARTICLE 9**  
**SECURITYHOLDERS' MEETINGS**

**SECTION 9.01. Purposes of Meeting.**

A meeting of holders of any or all series of Securities may be called at any time and from time to time pursuant to the provisions of this Article for any of the following purposes:

(a) to give any notice to the Company or to the Trustee, or to give any directions to the Trustee, or to waive any default hereunder and its consequences, or to take any other action authorized to be taken by securityholders pursuant to any of the provisions of Article 6;

(b) to remove the Trustee and appoint a successor trustee pursuant to the provisions of Article 7;

(c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 10.02; or

(d) to take any other action authorized to be taken by or on behalf of the holders of any specified aggregate principal amount of the Securities of any or all series, as the case may be, under any other provision of this Indenture or under applicable law.

**SECTION 9.02. Call of Meetings by Trustee.**

The Trustee may at any time call a meeting of securityholders of any or all series to take any action specified in Section 9.01, to be held at such time and at such place in New York, New York or Leawood, Kansas as the Trustee shall determine. Notice of every meeting of the securityholders of any or all series, setting forth the time and place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given in the manner provided in Section 15.04 not less than 20 nor more than 180 days prior to the date fixed for the meeting.

**SECTION 9.03. Call of Meetings by Company or Securityholders.**

In case at any time the Company, pursuant to a Board Resolution, or the holders of at least 10% in aggregate principal amount of the Securities of any or all series, as the case may be, then Outstanding, shall have requested the Trustee to call a meeting of securityholders of any or all series to take any action authorized in Section 9.01, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have provided notice of such meeting in the manner provided in Section 15.04 within 30 days after receipt of such request, then the Company or the holders of such Securities in the amount above specified may determine the time and the place in New York, New York or Leawood, Kansas for such meeting and may call such meeting by giving notice thereof as provided in Section 9.02.

#### **SECTION 9.04. Qualifications for Voting.**

To be entitled to vote at any meeting of securityholders a person shall be a holder of one or more Securities of such series Outstanding with respect to which a meeting is being held or a person appointed by an instrument in writing as proxy by such a holder or holders. The only persons who shall be entitled to be present or to speak at any meeting of the securityholders of any series shall be the persons entitled to vote at such meeting and their counsel, any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

#### **SECTION 9.05. Regulations.**

Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of securityholders of a series, in regard to proof of the holding of Securities and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it deems fit. Except as otherwise permitted or required by any such regulations, the holding of Securities shall be proved in the manner specified in Article 8 and the appointment of any proxy shall be proved in the manner specified in Article 8 or by having the signature of the person executing the proxy witnessed or guaranteed by any trust company, bank or banker authorized by Article 8 to certify to the holding of Bearer Securities. Such regulations may provide that written instruments appointing proxies, regular on their face, may be presumed valid and genuine without the proof specified in Article 8 or other proof.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by securityholders as provided in Section 9.03, in which case the Company or the securityholders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the holders of a majority in principal amount of the Securities represented at the meeting and entitled to vote.

Subject to the provisions of Section 8.01 and Section 8.04, at any meeting each securityholder or proxy shall be entitled to one vote for each \$1,000 (or the U.S. Dollar equivalent thereof in connection with Securities issued in a foreign currency or currency unit) Outstanding principal amount of Securities of such series held or represented by him or her; provided, however, that no vote shall be cast or counted at any meeting in respect of any Security challenged as not Outstanding and ruled by the chairman of the meeting to be not Outstanding. The chairman of the meeting shall have no right to vote except as a securityholder or proxy. Any meeting of securityholders duly called pursuant to the provisions of Section 9.02 or Section 9.03 may be adjourned from time to time, and the meeting may be reconvened without further notice.

#### **SECTION 9.06. Voting.**

The vote upon any resolution submitted to any meeting of securityholders shall be by written ballot on which shall be subscribed the signatures of the securityholders or proxies and on which shall be inscribed the identifying number or numbers or to which shall be attached a list of identifying numbers of the Securities held or represented by them. The chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of securityholders shall be prepared by the secretary of the meeting and there shall be attached to the record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that the notice was mailed as provided in Section 9.02. The record shall be signed and verified by the chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

**ARTICLE 10**  
**SUPPLEMENTAL INDENTURES**

**SECTION 10.01. Supplemental Indentures without Consent of Securityholders.**

Without the consent of any holders of Securities or coupons, the Company, when authorized by or pursuant to Board Resolution, and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act as in force at the date of the execution thereof) for one or more of the following purposes:

(a) to evidence the succession of another corporation to the Company, or successive successions, pursuant to Article 11 hereof, and the assumption by the successor corporation of the covenants, agreements and obligations of the Company herein and in the Securities;

(b) to add to the covenants of the Company such further covenants, restrictions, conditions or provisions as its Board of Directors shall consider to be for the protection of the holders of Securities, and to make the occurrence, or the occurrence and continuance, of a default in any of such additional covenants, restrictions, conditions or provisions an Event of Default permitting the enforcement of all or any of the several remedies provided in this Indenture as herein set forth, with such period of grace, if any, and subject to such conditions as such supplemental indenture may provide;

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

(d) to modify, eliminate or add to the provisions of this Indenture to such extent as shall be necessary to effect the qualification of this Indenture under the Trust Indenture Act, or under any similar federal statute hereafter enacted, and to add to this Indenture such other provisions as may be expressly permitted by the Trust Indenture Act, excluding however, the provisions referred to in Section 316(a)(2) of the Trust Indenture Act or any corresponding provision in any similar federal statute hereafter enacted;

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

(f) to cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental indenture which may be defective or inconsistent with any other provisions contained herein or in any supplemental indenture; to convey, transfer, assign, mortgage or pledge any property to or with the Trustee; or to make such other provisions in regard to matters or questions arising under this Indenture, provided such other provisions shall not adversely affect in any material respect the interests of the holders of the Securities or any related coupons, including provisions necessary or desirable to provide for or facilitate the administration of the trusts hereunder;

(g) to secure any series of Security; and

(h) to evidence and provide for the acceptance and appointment hereunder by a successor trustee with respect to the Securities of one or more series and to add or change any provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one trustee, pursuant to Section 7.11.

The Trustee is hereby authorized to join with the Company in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations which may be therein contained and to accept the conveyance, transfer, assignment, mortgage or pledge of any property thereunder, but the Trustee shall not be obligated to enter into any such supplemental indenture which adversely affects the Trustee's own rights, duties or immunities under this Indenture or otherwise. No supplemental indenture shall be effective as against the Trustee unless and until the Trustee has duly executed and delivered the same.

#### **SECTION 10.02. Supplemental Indentures with Consent of Holders.**

With the consent (evidenced as provided in Section 8.01) of the holders of not less than a majority in aggregate principal amount of the Securities of all series at the time Outstanding affected by such supplemental indenture (voting as one class), the Company, when authorized by a Board Resolution, and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act as in force at the date of the execution thereof) for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental indenture or of modifying in any manner the rights of the holders of the Securities of such series and any related coupons under this Indenture; provided, that no such supplemental indenture shall (1) extend the fixed maturity of any Securities, or reduce the principal amount thereof or premium, if any, or reduce the rate or extend the time of payment of interest thereon, without the consent of the holder of each Security so affected, (2) reduce the aforesaid percentage of Securities, the consent of the holders of which is required for any such supplemental indenture, without the consent of the holders of all Securities then Outstanding, (3) modify the subordination provisions in a manner adverse to the holders of such Securities, or (4) modify any of the above provisions.

Upon the request of the Company, accompanied by a copy of a Board Resolution certified by the Secretary or an Assistant Secretary of the Company authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of securityholders as aforesaid, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

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

Promptly after the execution by the Company and the Trustee of any supplemental indenture pursuant to the provisions of this Article 10, the Company shall provide notice, in the manner and to the extent provided in Section 15.04, setting forth in general terms the substance of such supplemental indenture, to all holders of Securities of each series so affected. Any failure of the Company so to provide such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture.

#### **SECTION 10.03. Compliance with Trust Indenture Act; Effect of Supplemental Indentures.**

Any supplemental indenture executed pursuant to the provisions of this Article 10 shall comply with the Trust Indenture Act, as then in effect. Upon the execution of any supplemental indenture pursuant to the provisions of this Article 10 and subject to the provisions in any supplemental indenture relating to the prospective application of such instrument, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the holders of Securities theretofore or thereafter authenticated and delivered hereunder and of any coupons appertaining thereto shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

The Trustee, subject to the provisions of Section 7.01 and Section 7.02, shall be entitled to receive and shall be fully protected in relying upon an Officer's Certificate or an Opinion of Counsel as conclusive evidence that any such supplemental indenture complies with the provisions of this Article 10.

#### **SECTION 10.04. Notation on Securities.**

Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article 10 may bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. New Securities of any series so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any modification of this Indenture contained in any such supplemental indenture may be prepared by the Company, authenticated by the Trustee and delivered, without charge to the securityholders, in exchange for the Securities of such series then Outstanding.

**ARTICLE 11**  
**CONSOLIDATION, MERGER, SALE OR CONVEYANCE**

**SECTION 11.01. Company May Consolidate, etc., on Certain Terms.**

The Company covenants that it will not merge into or consolidate with any other corporation or sell or convey all or substantially all of its assets to any person, firm or corporation, unless (1) either the Company shall be the continuing corporation, or the successor corporation (if other than the Company) shall be a corporation organized and existing under the laws of the United States of America or a state thereof or the District of Columbia and such corporation shall expressly assume the due and punctual payment of the principal of (and premium, if any, on) and any interest on all the Securities, according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of this Indenture to be performed by the Company by supplemental indenture, executed and delivered to the Trustee by such corporation, and (2) the Company or such successor corporation, as the case may be, shall not, immediately after such merger or consolidation, or such sale or conveyance, be in default in the performance of any such covenant or condition.

**SECTION 11.02. Successor Corporation Substituted.**

In case of any such consolidation, merger, sale or conveyance and upon any such assumption by the successor corporation, such successor corporation shall succeed to and be substituted for, and may exercise every right and power of, the Company, with the same effect as if it had been named herein as the party of the first part. Such successor corporation thereupon may cause to be signed, and may issue either in its own name or in the name of the Company, any or all of the Securities issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such successor corporation, instead of the Company, and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall make available for delivery any Securities which previously shall have been signed and delivered by the officers of the Company to the Trustee for authentication, and any Securities which such successor corporation thereafter shall cause to be signed and delivered to the Trustee for that purpose. All of the Securities so issued shall in all respects have the same legal rank and benefit under this Indenture as the Securities theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Securities had been issued at the date of the execution thereof.

In case of any such consolidation, merger, sale or conveyance such changes in phrasing and form (but not in substance) may be made in the Securities thereafter to be issued as may be appropriate.

**SECTION 11.03. Opinion of Counsel and Officer's Certificate to Trustee.**

The Trustee shall receive an Opinion of Counsel and Officer's Certificate as conclusive evidence that any such consolidation, merger, sale or conveyance, and any such assumption, complies with the provisions of this Article 11 and that all conditions precedent herein provided for relating to such transaction have been complied with.

**ARTICLE 12**  
**SATISFACTION AND DISCHARGE OF INDENTURE; UNCLAIMED MONEYS**

**SECTION 12.01. Discharge of Indenture.**

If at any time:

(a) the Company shall have delivered to the Trustee for cancellation all Securities of any series theretofore authenticated and all coupons, if any, appertaining thereto (other than (i) coupons appertaining to Bearer Securities surrendered for exchange for Registered Securities and maturing after such exchange, whose surrender is not required or has been waived as provided in Section 2.07, (ii) Securities and coupons that have been destroyed, lost or stolen and that have been replaced or paid as provided in Section 2.09, (iii) coupons appertaining to Securities called for redemption and maturing after the relevant redemption date, whose surrender has been waived as provided in Section 3.03, and (iv) Securities and coupons for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 4.03), or

(b) all such Securities of such series and, in the case of (a)(i) or (a)(ii) above, any coupons appertaining thereto not theretofore delivered to the Trustee for cancellation (i) shall have become due and payable, (ii) are by their terms to become due and payable within one year, or (iii) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption, and the Company in the case of (a)(i) or (a)(iii) above shall deposit or cause to be deposited with the Trustee as trust funds the entire amount (other than moneys repaid by the Trustee or any paying agent to the Company in accordance with Section 12.04) sufficient to pay at maturity or upon redemption all Securities of such series and coupons not theretofore delivered to the Trustee for cancellation, including principal (and premium, if any) and any interest due or to become due to such date of maturity or date fixed for redemption, as the case may be, and if in either case the Company shall also pay or cause to be paid all other sums payable hereunder by the Company with respect to such series, then this Indenture shall cease to be of further effect with respect to the Securities of such series, and the Trustee, on demand of and at the cost and expense of the Company and subject to Section 15.05, shall execute such instruments reasonably requested by the Company acknowledging satisfaction of and discharging this Indenture with respect to the Securities of such series. The Company agrees to reimburse the Trustee for any costs or expenses thereafter reasonably incurred by the Trustee in connection with this Indenture or the Securities of such series. Notwithstanding the satisfaction and discharge of this Indenture with respect to the Securities of any series or of all series, the obligations of the Company to the Trustee under Section 7.06 shall survive.

The Company will deliver to the Trustee an Officer's Certificate and an Opinion of Counsel which together shall state that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.



**SECTION 12.02. Deposited Moneys to be Held in Trust by Trustee.**

Subject to the provisions of Section 12.03 and 12.04, all moneys deposited with the Trustee pursuant to Section 12.01 shall be held in trust and applied by it to the payment, either directly or through any paying agent (including the Company acting as its own paying agent), to the persons entitled thereto, of all sums due and to become due thereon for principal and interest (and premium, if any) for which payment of such money has been deposited with the Trustee.

**SECTION 12.03. Paying Agent to Repay Moneys Held.**

In connection with the satisfaction and discharge of this Indenture with respect to Securities of any series and the payment of all amounts due to the Trustee under Section 7.06, all moneys with respect to such Securities then held by any paying agent under the provisions of this Indenture shall, upon demand of the Company, be repaid to it or paid to the Trustee and thereupon such paying agent shall be released from all further liability with respect to such moneys.

**SECTION 12.04. Return of Unclaimed Moneys.**

Any moneys deposited with or paid to the Trustee or any paying agent for the payment of the principal of (and premium, if any) or interest on any Security and not applied but remaining unclaimed for two years after the date upon which such principal (and premium, if any, on) or interest shall have become due and payable, shall be repaid to the Company by the Trustee or such paying agent on demand, and the holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for any payment which such holder may be entitled to collect and all liability of the Trustee or any paying agent with respect to such moneys shall thereupon cease.

**ARTICLE 13  
IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS**

**SECTION 13.01. Indenture and Securities Solely Corporate Obligations.**

No recourse under or upon any obligation, covenant or agreement contained in this Indenture, or in any Security or coupon, or because of any indebtedness evidenced thereby, shall be had against any incorporator, or against any past, present or future stockholder, officer or director, as such, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, under any rule of law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise, all such liability being expressly waived and released by the acceptance of the Securities or coupons by the holders thereof and as part of the consideration for the issue of the Securities.

**ARTICLE 14**  
**DEFEASANCE AND COVENANT DEFEASANCE**

**SECTION 14.01. Applicability of Article.**

Unless, as specified pursuant to Section 2.03(b), provision is made that either or both of (a) defeasance of the Securities of a series under Section 14.02 and (b) covenant defeasance of the Securities of a series under Section 14.03 shall not apply to the Securities of a series, then the provisions of such Section 14.02 and Section 14.03, together with Section 14.04 and Section 14.05, shall be applicable to the Outstanding Securities of all series upon compliance with the conditions set forth below in this Article 14.

**SECTION 14.02. Defeasance and Discharge.**

Subject to Section 14.05, the Company may cause itself to be discharged from its obligations with respect to the Outstanding Securities of any series on and after the date the conditions precedent set forth below are satisfied but subject to satisfaction of the conditions subsequent set forth below (hereinafter, "defeasance"). For this purpose, such defeasance means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by the Outstanding Securities of such series and to have satisfied all its other obligations under such Securities and this Indenture insofar as such Securities are concerned (and the Trustee, at the expense of the Company, shall execute such instruments reasonably requested by the Company acknowledging the same), except for the following which shall survive until otherwise terminated or discharged hereunder: (a) the rights of holders of Outstanding Securities of such series to receive, solely from the trust fund described in Section 14.04 and as more fully set forth in such Section, payments of the principal of and any premium and interest on such Securities when such payments are due, (b) the Company's obligations with respect to such Securities under Section 2.07, Section 2.08, Section 2.09, Section 4.02 and Section 4.03 and such obligations as shall be ancillary thereto, (c) the rights, powers, trusts, duties, immunities and other provisions in respect of the Trustee hereunder, and (d) this Article 14. Subject to compliance with this Article 14, defeasance with respect to Securities of a series by the Company is permitted under this Section 14.02 notwithstanding the prior exercise of its rights under Section 14.03 with respect to the Securities of such series. Following a defeasance, payment of the Securities of such series may not be accelerated because of an Event of Default.

**SECTION 14.03. Covenant Defeasance.**

The Company may cause itself to be released from its obligations under any Sections applicable to Securities of a series that are determined pursuant to Section 2.03(b) to be subject to this provision with respect to the Outstanding Securities of such series on and after the date the conditions precedent set forth below are satisfied but subject to satisfaction of the conditions subsequent set forth below (hereinafter, "covenant defeasance"). For this purpose, such covenant defeasance means that, with respect to the Outstanding Securities of such series, the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such Section, whether directly or indirectly by reason of any reference elsewhere herein to any such Section or by reason of any reference in any such Section to any other provision herein or in any other document, but the remainder of this Indenture and such Securities shall be unaffected thereby.

#### **SECTION 14.04. Conditions to Defeasance or Covenant Defeasance.**

The following shall be the conditions precedent or, as specifically noted below, subsequent to application of either Section 14.02 or Section 14.03 to the Outstanding Securities of such series:

(a) The Company shall irrevocably have deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the holders of such Securities, (i) money in an amount, (ii) U.S. Government Obligations which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment, money in an amount, or (iii) a combination thereof, sufficient, without reinvestment, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, and which shall be applied by the Trustee to pay and discharge, (1) the principal of and any premium and interest on the Outstanding Securities of such series to maturity or redemption, as the case may be, and (2) any mandatory sinking fund payments or analogous payments applicable to the Outstanding Securities of such series on the due dates thereof. Before such a deposit the Company may make arrangements satisfactory to the Trustee for the redemption of Securities at a future date or dates in accordance with Article 3 which shall be given effect in applying the foregoing. For this purpose, "U.S. Government Obligations" means securities that are (x) direct obligations of the United States of America for the payment of which its full faith and credit is pledged or (y) obligations of a person controlled or supervised by and acting as an agency or instrumentality of the United States of America the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any such U.S. Government Obligation or a specific payment of principal of or interest on any such U.S. Government Obligation held by such custodian for the account of the holder of such depository receipt, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government Obligation or the specific payment of principal of or interest on the U.S. Government Obligation evidenced by such depository receipt;

(b) No Default, or event that after notice or lapse of time, or both, would become a Default with respect to the Securities of such series, shall have happened and be continuing (i) on the date of such deposit or (ii) insofar as Section 6.01(d) and Section 6.01(e) are concerned, at any time during the period ending on the 123rd day after the date of such deposit or, if longer, ending on the day following the expiration of the longest preference period applicable to the Company in respect of such deposit (it being understood that the condition in this clause (b) is a condition subsequent and shall not be deemed satisfied until the expiration of such period);

(c) Such defeasance or covenant defeasance shall not (i) cause the Trustee for the Securities of such series to have a "conflicting interest" as defined in Section 310(b) of the Trust Indenture Act or (ii) result in the trust arising from such deposit to constitute, unless it is qualified as, a regulated investment company under the Investment Company Act of 1940, as amended;

(d) Such defeasance or covenant defeasance shall not result in a breach or violation of, or constitute a default under, this Indenture or any other agreement or instrument to which the Company is a party or by which it is bound;

(e) Such defeasance or covenant defeasance shall not cause any Securities of such series then listed on any registered national securities exchange under the Exchange Act to be delisted;

(f) In the case of a defeasance under Section 14.02, the Company shall have delivered to the Trustee an Opinion of Counsel stating that (x) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (y) since the date of this Indenture there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such opinion shall confirm that, the holders of the Outstanding Securities of such series will not recognize income, gain or loss for federal income tax purposes as a result of such defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such defeasance had not occurred;

(g) In the case of covenant defeasance under Section 14.03, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the holders of the Outstanding Securities of such series will not recognize income, gain or loss for federal income tax purposes as a result of such covenant defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred;

(h) Such defeasance or covenant defeasance shall be effected in compliance with any additional terms, conditions or limitations which may be imposed on the Company in connection therewith pursuant to Section 2.03(b); and

(i) The Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent and subsequent provided for in this Indenture relating to either the defeasance under Section 14.02 or the covenant defeasance under Section 14.03, as the case may be, have been complied with.

**SECTION 14.05. Deposited Money and U.S. Government Obligations to be Held in Trust; Other Miscellaneous Provisions.**

All money and U.S. Government Obligations (including the proceeds thereof) deposited with the Trustee pursuant to Section 14.04 in respect of the Outstanding Securities of such series shall be held in trust and applied by the Trustee, in accordance with the provisions of such Securities and this Indenture, to the payment, either directly or through any paying agent (but not including the Company acting as its own paying agent) as the Trustee may determine, to the holders of such Securities of all sums due and to become due thereon in respect of principal and any premium and interest, but such money need not be segregated from other funds except to the extent required by law.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the money or U.S. Government Obligations deposited pursuant to Section 14.04 or the principal and interest received in respect thereof.

Anything herein to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon Company Request any money or U.S. Government Obligations held by it as provided in Section 14.04 which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect an equivalent defeasance or covenant defeasance, provided that the Trustee shall not be required to liquidate any U.S. Government Obligations in order to comply with the provisions of this paragraph.

Anything herein to the contrary notwithstanding, if and to the extent the deposited money or U.S. Government Obligations (or the proceeds thereof) either (i) cannot be applied by the Trustee in accordance with this Section because of a court order or by operation of Article 16 or (ii) are for any reason insufficient in amount, then the Company's obligations to pay principal of and any premium and interest on the Securities of such series shall be reinstated to the extent necessary to cover the deficiency on any due date for payment. In any such case, the Company's interest in the deposited money and U.S. Government Obligations (and proceeds thereof) shall be reinstated to the extent the Company's payment obligations are reinstated.

## **ARTICLE 15 MISCELLANEOUS PROVISIONS**

### **SECTION 15.01. Benefits of Indenture Restricted to Parties and Securityholders.**

Nothing in this Indenture or in the Securities, expressed or implied, shall give or be construed to give to any person, firm or corporation, other than the parties hereto and their successors and assigns and the holders of the Securities (and, with respect to the provisions of Article 16, the holders of senior Indebtedness), any legal or equitable right, remedy or claim under this Indenture or under any covenant or provision herein contained, all such covenants and provisions being for the sole benefit of the parties hereto and their successors and assigns and the holders of the Securities (and, with respect to the provisions of Article 16, the holders of senior Indebtedness).

### **SECTION 15.02. Provisions Binding on Company's Successors.**

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

### **SECTION 15.03. Addresses for Notices, etc., to Company and Trustee.**

Any notice or demand which by any provisions of this Indenture is required or permitted to be given or served by the Trustee or by the holders of Securities to or on the Company may be given or served by postage prepaid first class mail addressed (until another address is filed by the Company with the Trustee), as follows: CrossFirst Bankshares, Inc., 11440 Tomahawk Creek Parkway, Leawood, Kansas 66211, Attn: Chief Financial Officer. Any notice, direction, request or demand by any securityholder to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if given or made in writing at the Corporate Trust Office of the Trustee as set forth in Section 4.02.

**SECTION 15.04. Notice to Holders of Securities; Waiver.**

Except as otherwise expressly provided herein, where this Indenture provides for notice of holders of Securities of any event,

(a) such notice shall be sufficiently given to holders of Registered Securities if in writing and mailed, first-class postage prepaid, to each holder of a Registered Security affected by such event, at the address of such holder as it appears in the Security Register, not earlier than the earliest date, and not later than the latest date, prescribed for the giving of such notice; and

(b) such notice shall be sufficiently given to holders of Bearer Securities if published in an Authorized Newspaper in the Borough of Manhattan, the City of New York and in such other city or cities as may be specified in such Securities on a Business Day at least twice, the first such publication to be not earlier than the earliest date, and not later than the latest date, prescribed for the giving of such notice.

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

Neither the failure to give notice by publication to holders of Bearer Securities as provided above, nor any defect in any notice so published, shall affect the sufficiency of any notice to holders of Registered Securities given as provided herein.

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 of Securities shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

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

Notwithstanding anything in this Indenture to the contrary, where any notice is to be given to the holders of global Securities, notice shall be sufficient if given in accordance with the procedures of the U.S. Depositary.

**SECTION 15.05. Evidence of Compliance with Conditions Precedent.**

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

Each Officer's Certificate and Opinion of Counsel provided for in this Indenture and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Indenture shall include (1) a statement that the person making such certificate or opinion has read such covenant or condition; (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (3) a statement that, in the opinion of such person, 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 (4) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

**SECTION 15.06. Legal Holidays.**

In any case where the date of maturity of interest on or principal of the Securities or the date fixed for redemption of any Securities shall be a Saturday or Sunday or a legal holiday in New York, New York or Leawood, Kansas or in such other place or places as the Company may designate pursuant to Section 4.02, or a day on which banking institutions in New York, New York or Leawood, Kansas or in such other place or places are authorized by law or required by executive order to close, then payment of interest or principal (and premium, if any) need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after such date.

**SECTION 15.07. Trust Indenture Act to Control.**

If and to the extent that any provision of this Indenture limits, qualifies or conflicts with another provision included in this Indenture which is required to be included in this Indenture by any of Sections 310 to 317, inclusive, of the Trust Indenture Act, such required provision shall control.

**SECTION 15.08. Execution in Counterparts.**

This Indenture may be executed in any number of counterparts, each of which shall be an original; but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission will constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF will be deemed to be their original signatures for all purposes.

**SECTION 15.09. Governing Law; Waiver of Jury Trial.**

This Indenture and each Security shall be deemed to be a contract made under the laws of the State of New York, and for all purposes shall be governed by and construed in accordance with the laws of the State of New York.

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 SECURITIES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**SECTION 15.10. Severability.**

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

The Trustee, by its execution of this Indenture, hereby accepts the trusts in this Indenture declared and provided, upon the terms and conditions hereinabove set forth.

**SECTION 15.11. Interpretations.**

The Table of Contents, Cross-Reference Table and Headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Company or its Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

**SECTION 15.12. U.S.A. Patriot Act.**

The parties hereto acknowledge that in accordance with Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "USA PATRIOT Act"), the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the USA PATRIOT Act.

**SECTION 15.13. 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.



**SECTION 15.14. Jurisdiction.**

The Company and the Trustee agree that any suit, action or proceeding arising out of or based upon this Indenture or the Securities may be instituted in any state or Federal court in the Borough of Manhattan, New York, New York, and any appellate court from any thereof, and irrevocably submit to the non-exclusive jurisdiction of such courts in any suit, action or proceeding. The Company and the Trustee irrevocably waive, to the fullest extent permitted by law, any objection to any suit, action, or proceeding that may be brought in connection with this Indenture or the Securities, including such actions, suits or proceedings relating to securities laws of the United States or any state thereof, in such courts whether on the grounds of venue, residence or domicile or on the ground that any such suit, action or proceeding has been brought in an inconvenient forum. The Company and the Trustee agree that final judgment in any such suit, action or proceeding brought in such court shall be conclusive and binding upon the Company or the Trustee, as applicable, and may be enforced in any court to the jurisdiction of which the Company or the Trustee, as applicable, is subject by a suit upon such judgment.

**ARTICLE 16  
RANKING OF SECURITIES**

**SECTION 16.01. Ranking.**

Except as otherwise provided in a supplemental indenture or pursuant to Section 2.03, the Company agrees, and each holder by accepting a Security agrees, that the indebtedness evidenced by the Securities constitutes and will constitute a senior unsecured general obligation of the Company, ranking equally with other existing and future senior unsecured Indebtedness of the Company, ranking equally with other existing and future senior unsecured Indebtedness of the Company and ranking senior in right of payment to any future Indebtedness of the Company that is expressly made subordinate to the Securities by the terms of such Indebtedness.

IN WITNESS WHEREOF, CROSSFIRST BANKSHARES, INC. has caused this Indenture to be signed and acknowledged by its Chief Executive Officer or its Chief Financial Officer, and [\_\_\_\_\_] has caused this Indenture to be signed and acknowledged by one of its Responsible Officers, all as of the day and year first above written.

CROSSFIRST BANKSHARES, INC.

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

[ \_\_\_\_\_ ]  
AS  
TRUSTEE

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

**EXHIBIT A**  
**[FORM OF CERTIFICATION]**

**[FORM OF CERTIFICATE TO BE GIVEN BY PERSON ENTITLED TO RECEIVE (1) BEARER SECURITY, (2) SECURITY INITIALLY REPRESENTED BY A TEMPORARY GLOBAL SECURITY OR (3) INTEREST ON A TEMPORARY GLOBAL SECURITY] CERTIFICATE**

[Insert title or sufficient description of Securities]

This is to certify that the above-captioned Securities are being acquired by or on behalf of (or for offer to resell or for resale to), and if this certificate is being delivered in connection with a payment of interest, were beneficially owned by or on behalf of: (a) a person (other than a financial institution for purposes of resale during the restricted period) who is not a United States person; (b) a United States person (other than a financial institution for purposes of resale during the restricted period) who is (i) a foreign branch of a United States financial institution or (ii) a United States person acquiring such Securities through the foreign branch of a United States financial institution and who for purposes of this certification holds such Securities through such financial institution on the date hereof, and, in the case of either (i) or (ii), such United States financial institution has agreed, for the benefit of the Company, to comply with the requirements of Section 165(j)(3)(A), (b) or (c) of the Internal Revenue Code of 1986, as from time to time amended, and the regulations thereunder; or (c) a financial institution for purposes of resale during the restricted period and such financial institution has not acquired such Securities for purposes of resale directly or indirectly to a United States person or to a person within the United States or its Possessions. If the undersigned is a clearing organization, the undersigned has obtained a similar certificate from its member organizations on which this certificate is based; provided, that if the undersigned has actual knowledge that the information contained in such a certificate is false (and, absent documentary evidence that the beneficial owner of such Security is not a United States person, it will be deemed to have actual knowledge that such certificate is false if it has a United States address for such beneficial owner, other than a financial institution described above), the undersigned will not deliver a Security in temporary or definitive bearer form to the person who signed such certificate notwithstanding the delivery of such certificate to the undersigned.

As used herein, "United States person" means a citizen or resident of the United States, a corporation, partnership or other entity created or organized in or under the laws of the United States and an estate or trust the income of which is subject to United States federal income taxation regardless of its source, "United States" means the United States of America (including the States and the District of Columbia), "Possessions" of the United States include Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and Northern Mariana Islands, "restricted period" means the period described in Section 1.163-5(c)(2)(i)(D)(7) of the Treasury Regulations and "financial institution" means the persons described in Section 1.165-12(c)(1)(v) of the Treasury Regulations.

We undertake to advise you by [telex] if the above statement as to beneficial ownership is not correct on the date of delivery of the above-captioned Securities or on the interest payment date with respect to the above-captioned Securities, as the case may be, as to all of such Securities.

We understand that this certificate may be required in connection with certain tax legislation in the United States. If administrative or legal proceedings are commenced or threatened in connection with which this certificate is or would be relevant, we irrevocably authorize you to produce this certificate or a copy thereof to any interested party in such proceedings.

Dated: \_\_\_\_\_, 20\_\_

[To be dated on or after \_\_\_\_\_, 20\_\_ (the date determined as provided in the Indenture)]

[Name of Person Entitled to Receive Bearer Security or Interest]

\_\_\_\_\_  
(Authorized Signatory)

Name: \_\_\_\_\_

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

CROSSFIRST BANKSHARES, INC.  
AS ISSUER,  
AND  
[\_\_\_\_\_] ,  
AS TRUSTEE,  
SUBORDINATED INDENTURE  
DATED AS OF [\_\_\_\_\_, \_\_\_\_]  
SUBORDINATED DEBT SECURITIES

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**CROSS-REFERENCE TABLE**

Reconciliation and tie between the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act"), and the Indenture dated as of \_\_\_\_\_, 2023.

<b>SECTION OF Trust Indenture Act</b>	<b>SECTION OF INDENTURE</b>
310(a)(1) and (2)	7.09
310(a)(3) and (4)	Not applicable
310(a)(5)	7.09
310(b)	7.08 and 7.10
310(c)	Not applicable
311(a) and (b)	7.13
311(c)	Not applicable
312(a)	5.01 and 5.02(a)
312(b) and (c)	5.02(b)
313(a)	5.04(a)
313(b)	5.04(b)
313(c)	5.04(b)
313(d)	5.04(c)
314(a)	5.03
314(b)	Not applicable
314(c)(1) and (2)	14.04(i)
314(c)(3)	Not applicable
314(d)	Not applicable
314(e)	15.05
314(f)	Not applicable
315(a), (c) and (d)	7.01
315(b)	7.14
315(e)	6.14
316(a)(1)	6.12
316(a)(2)	Omitted
316(a) last sentence	8.04
316(b)	6.08
316(c)	8.06
317(a)	6.03 and 6.04
317(b)	4.03(a)
318(a)	15.07

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

Attention should also be directed to Section 318(c) of the Trust Indenture Act, which provides that the provisions of Sections 310 to and including Section 317 of the Trust Indenture Act are a part of and govern every qualified indenture, whether or not physically contained therein.

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THIS INDENTURE, dated as of [\_\_\_\_\_, \_\_\_\_\_], between CrossFirst Bankshares, Inc., a corporation duly organized and existing under the laws of the State of Kansas (the “Company”), and [\_\_\_\_\_, \_\_\_\_\_], as trustee (the “Trustee,” which term shall include any successor trustee appointed pursuant to Article 7 of this Indenture).

WHEREAS, the Company deems it necessary to issue from time to time for its lawful purposes securities (the “Securities”) evidencing its indebtedness and has duly authorized the execution and delivery of this Indenture to provide for the issuance of the Securities in one or more series, unlimited as to principal amount, to bear such rates of interest, to mature at such time or times, and to have such other provisions as shall be fixed as hereinafter provided; and

WHEREAS, the Company represents that all acts and things necessary to constitute these presents a valid indenture and agreement according to its terms have been done and performed, and the execution of this Indenture has in all respects been duly authorized, and the Company, in the exercise of legal right and power in it vested, is executing this Indenture;

NOW, THEREFORE:

In order to declare the terms and conditions upon which the Securities are authenticated, issued and received, and in consideration of the premises, of the purchase and acceptance of the Securities by the holders thereof and of the sum of One Dollar to it duly paid by the Trustee at the execution of these presents, the receipt whereof is hereby acknowledged, the Company covenants and agrees with the Trustee, for the equal and proportionate benefit of the respective holders from time to time of the Securities, as follows:

**ARTICLE 1  
DEFINITIONS**

**SECTION 1.01. Definitions.**

The terms defined in this Section (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any supplemental indenture shall have the respective meanings specified in this Section. All other terms used in this Indenture that are defined in the Trust Indenture Act or that are by reference therein defined in the Securities Act shall have the meanings (except as herein otherwise expressly provided or unless the context otherwise requires) assigned to such terms in the Trust Indenture Act or in the Securities Act, as applicable, in each case as in force at the date of this Indenture as originally executed. All accounting terms used herein and not expressly defined shall have the meanings assigned to such terms in accordance with GAAP, and the term "GAAP" means such accounting principles as are generally accepted at the time of any computation. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision. The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular.

"Additional Amounts" shall mean any additional amounts to be paid by the Company in respect of Securities of a series, as may be specified pursuant to Section 2.03(b) hereof and in such Security and under the circumstances specified therein, in respect of specified taxes, assessments or other governmental charges imposed on certain holders who are United States Aliens.

"Authorized Newspaper" shall mean a newspaper (which, in the case of the United Kingdom, will, if practicable, be the *Financial Times (London Edition)* and, in the case of Luxembourg, will, if practicable, be the *Luxemburger Wort*) of general circulation in the place of publication, published in an official language of the country of publication and customarily published at least once a day for at least five days in each calendar week. Whenever successive weekly publications in an Authorized Newspaper are authorized or required hereunder, they may be made (unless otherwise provided herein) on the same or different days of the week and in the same or different Authorized Newspapers. If it shall be impractical in the opinion of the Trustee to make any publication of any notice required hereby in an Authorized Newspaper, any publication or other notice in lieu thereof which is made or given with the approval of the Trustee shall constitute a sufficient publication of such notice.

"Authorized Officer" shall have the meaning set forth in Section 3.02 hereof.

"Bearer Security" shall mean any Security established pursuant to Section 2.01 and Section 2.03 hereof which is payable to the bearer (including, without limitation, any Security in temporary or permanent global bearer form) and title to which passes by delivery only, but does not include any coupons.

"Board of Directors" or "Board" shall mean the Board of Directors of the Company or any duly authorized committee of such Board.

"Board Resolution" shall mean a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors or by a committee acting under authority of or appointment by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee.

“Business Day” shall mean, unless otherwise specified pursuant to Section 2.03(b), any day other than a Saturday, Sunday or other day on which banking institutions in the City of New York, New York, are authorized or obligated by law, regulation or executive order to close; provided, that such term shall mean, with respect to any Place of Payment or any other particular location referred to in this Indenture or in the Securities, a day that in the city (or in any one of the cities, if more than one) in which amounts are payable, as specified in the form of such Security, is not a day on which banking institutions are authorized or required by law or regulation to be closed.

“Capital Lease Obligation” means, at any time any determination thereof is made, the amount of the liability in respect of a capital lease that would at such time be so required to be capitalized on the balance sheet in accordance with GAAP.

“Capital Stock” shall mean, as to shares of a particular corporation, outstanding shares of stock of any class, whether now or hereafter authorized, irrespective of whether such class shall be limited to a fixed sum or percentage in respect of the rights of the holders thereof to participate in dividends and in the distribution of assets upon the voluntary liquidation, dissolution or winding up of such corporation.

“Commission” shall mean the Securities and Exchange Commission or any successor agency.

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

“Company Request” and “Company Order” shall mean, respectively, a written request or order signed in the name of the Company by its Chief Executive Officer, President, any Vice President, Chief Financial Officer or Secretary, and delivered to the Trustee.

“Corporate Trust Office” shall mean the designated office of the Trustee at which, at any particular time, its corporate trust business relating to this Indenture shall be administered, which office at the date hereof is located at [\_\_\_\_\_], or such other address as the Trustee may designate from time to time by notice to 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 Company).

“Coupon” shall mean any interest coupon appertaining to a Bearer Security.

“Default” or “default” shall have the meaning specified in Article 6.

“Dollar” or “\$” shall mean a dollar or other equivalent unit in such coin or currency of the United States of America as at the time shall be legal tender for the payment of public and private debts.

“Event of Default” shall have the meaning specified in Article 6.

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

“Exchange Date” shall have the meaning set forth in Section 2.08.

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession.

“Guaranty” means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business), direct or indirect, in any manner (including, without limitation, letters of credit and reimbursement agreements in respect thereof), or all or any part of any Indebtedness.

“Hedging Obligations” means, with respect to any Person, the Obligations of such Person under interest rate swap agreements, interest rate cap agreements, and interest rate collar agreements, and other agreements or arrangements designed to protect such Person against fluctuations in interest rates.

“Holder,” “holder of Securities,” “securityholder” or other similar term shall mean (a) in the case of any Registered Security, the person in whose name such Security is registered in the Security Register kept by the Company for that purpose, in accordance with the terms hereof, and (b) in the case of any Bearer Security, the bearer thereof, and as used with respect to any coupon appertaining to any Bearer Security, the term “holder” shall mean the bearer thereof.

“Indebtedness” means, with respect to any Person, any indebtedness of such Person, whether or not contingent, in respect of borrowed money or evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof) or representing Capital Lease Obligations or the balance deferred and unpaid of the purchase price of any property or representing any Hedging Obligations, except any such balance that constitutes an accrued expense or trade payable and also includes, to the extent not otherwise included, the Guaranty of any indebtedness of such Person or any other Person.

“Indenture” shall mean this instrument as originally executed and delivered or as it may from time to time be supplemented or amended by one or more supplemental indentures entered into pursuant to the applicable provisions hereof, including, without limitation, the forms and terms of particular series of Securities established as contemplated by Article 2.

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

“Obligations” means any principal, premium, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities.

“Officer’s Certificate” shall mean a certificate signed by the Chief Executive Officer or the Chief Financial Officer of the Company and delivered to the Trustee.

“opening of business” means 9:00 a.m. (New York City time).

“Opinion of Counsel” shall mean an opinion in writing signed by legal counsel, who may be an employee of or counsel to the Company and who shall be reasonably satisfactory to the Trustee, or who may be other counsel reasonably satisfactory to the Trustee.

“Original Issue Discount Securities” shall mean any Securities that are initially sold at a discount from the principal amount thereof and that provide upon an Event of Default for declaration of an amount less than the principal amount thereof to be due and payable upon acceleration thereof.

“Outstanding” or “outstanding,” when used with reference to Securities, shall, subject to the provisions of Section 8.01 and Section 8.04, mean, as of any particular time, all Securities authenticated and delivered by the Trustee under this Indenture, except:

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

(b) Securities, or portions thereof, for the payment or redemption of which moneys in the necessary amount shall have been deposited in trust with the Trustee or with any paying agent (other than the Company) or shall have been set aside and segregated and held in trust by the Company (if the Company shall act as its own paying agent) for the holders of such Securities and any coupons appertaining thereto; provided, that if such Securities, or portions thereof, are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as provided in Article 3, or provision satisfactory to the Trustee shall have been made for giving such notice;

(c) Securities that have been defeased pursuant to Section 14.02 hereof; and

(d) Securities that have been paid, mutilated, destroyed, lost or stolen and replaced pursuant to Section 2.09, or Securities in exchange for, in lieu of and in substitution for which other Securities shall have been authenticated and delivered pursuant to the terms of Section 2.07, unless proof satisfactory to the Trustee is presented that any such Securities are held by bona fide holders in due course.

“Periodic Offering” shall mean an offering of Securities of a series, from time to time, the specific terms of which (including, without limitation, the rate or rates of interest or formula for determining the rate or rates of interest thereon, if any, the maturity date or dates thereof and the redemption provisions, if any, with respect thereto) are to be determined by the Company upon the issuance of such Securities.

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

“Place of Payment,” when used with respect to the Securities of any series, means the place or places where, subject to the provisions of Section 4.02, the principal of (and premium, if any, on) and any interest on the Securities of that series are payable as specified as contemplated by Section 2.03(b).

“Possessions,” when used with respect to the United States, shall include Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and Northern Mariana Islands.

“Record date” as used with respect to any interest payment date shall have the meaning specified in Section 2.05.

“Registered Security” shall mean any Security established pursuant to Section 2.01 and Section 2.03(b) that is registered on the Security Register of the Company.

“Responsible Officer,” when used with respect to the Trustee, shall mean any officer within the Corporate Trust Office of the Trustee (or any successor group of the Trustee), including any Vice President, Assistant Vice President, Assistant Secretary or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also shall mean, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of such officer’s knowledge of and familiarity with the particular subject.

“Securities” shall have the meaning set forth in the preamble of this Indenture.

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

“Security Register” and “Security Registrar” shall have the respective meanings set forth in Section 2.07(a) hereof.

“Senior Indebtedness” means the principal of (and premium, if any), accrued interest (including interest accruing on or after the filing in bankruptcy or reorganization relating to the Company whether or not a claim for post-filing interest is allowed in such proceedings), fees, charges, expenses, reimbursement obligations, guarantees and other amounts owing with respect to all Indebtedness of the Company (including Indebtedness of others guaranteed by the Company) other than the Securities, in any such case whether outstanding on the date of this Indenture or the date Securities of any series are issued hereunder or thereafter created, incurred or assumed, unless in any case in the instrument creating or evidencing any such Indebtedness or obligation or pursuant to which the same is outstanding it is provided that such Indebtedness or obligation is not superior in right of payment to the Securities or it is provided that such Indebtedness or obligation is subordinated to Senior Indebtedness to substantially the same extent as the Securities are subordinated to Senior Indebtedness.

“Subsidiary” shall mean, in respect of any Person, any corporation, association, partnership, limited liability company or other business entity of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by (a) such Person, (b) such Person and one or more Subsidiaries of such Person or (c) one or more Subsidiaries of such Person.



“Trustee” shall mean the person identified as “Trustee” in the first paragraph hereof in its capacity as such until the acceptance of appointment of a successor trustee pursuant to the provisions of Article 7, and thereafter shall mean such successor trustee.

“Trust Indenture Act,” except as otherwise provided in this Indenture, shall mean the Trust Indenture Act of 1939, as amended, as in force at the date of this Indenture as originally executed.

“United States Alien” shall mean any person who, for United States federal income tax purposes, is a foreign corporation, a non-resident alien individual, a non-resident alien fiduciary of a foreign estate or trust, or a foreign partnership to the extent that one or more of its members is, for United States federal income tax purposes, a foreign corporation, a non-resident alien individual or a non-resident alien fiduciary of a foreign estate or trust.

“U.S. Depository” shall mean, with respect to the Securities of any series issuable or issued in whole or in part in the form of one or more permanent global Securities, the person designated as U.S. Depository by the Company pursuant to Section 2.03(b), which must be a clearing agency registered under the Exchange Act, until a successor U.S. Depository shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “U.S. Depository” shall mean or include each person who is then a U.S. Depository hereunder, and if at any time there is more than one such person, “U.S. Depository” as used with respect to the Securities of any series shall mean the U.S. Depository with respect to the Securities of such series.

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

## **ARTICLE 2 ISSUE, EXECUTION, REGISTRATION AND EXCHANGE OF SECURITIES**

### **SECTION 2.01. Amount Unlimited; Issuable in Series.**

Upon the execution of this Indenture, or from time to time thereafter, Securities up to the aggregate principal amount and containing terms and conditions from time to time authorized by or pursuant to a Board Resolution, or in a supplemental indenture, as set forth in Section 2.03, may be executed by the Company and delivered to the Trustee for authentication, and the Trustee shall thereupon authenticate and make available for delivery the Securities to or upon Company Order, without any further action by the Company but subject to the provisions of Section 2.03, or in a supplemental indenture, as set forth in Section 2.03.

The Securities may be issued in one or more series. The aggregate principal amount of Securities of all series that may be authenticated, delivered and outstanding under this Indenture is not limited hereunder. The Securities of a particular series may be issued up to the aggregate principal amount of Securities for such series from time to time authorized by or pursuant to a Board Resolution.

**SECTION 2.02. Form of Trustee’s Certificate of Authentication.**

The Trustee’s certificate of authentication shall be in substantially the following form:

[Form of Trustee’s Certificate of Authentication]

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

Dated: [ ]

as Trustee

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

**SECTION 2.03. Form of Securities Generally; Establishment of Terms of Series.**

(a) The Registered Securities, if any, of each series, the Bearer Securities, if any, of each series and related coupons, if any, the temporary global Securities of each series, if any, and the permanent global Securities of each series, if any, shall be in the forms established from time to time in or pursuant to one or more Board Resolutions (and, to the extent established pursuant to rather than set forth in one or more Board Resolutions, in an Officer’s Certificate (to which shall be attached true and correct copies of the relevant Board Resolution(s)) detailing such establishment) or established in a supplemental indenture.

The Securities may be issued in typewritten, printed or engraved form with such letters, numbers or other marks of identification or designation (including “CUSIP” numbers, if then generally in use) and such legends or endorsements printed, lithographed or engraved thereon as the Company may deem appropriate and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange on which the Securities may be listed, or to conform to usage. Unless otherwise specified as contemplated hereinafter, Securities in bearer form shall have interest coupons attached.

(b) At or prior to the initial issuance of Securities of any series, the particular terms of Securities of such series shall be established in or pursuant to one or more Board Resolutions (and to the extent established pursuant to rather than set forth in one or more Board Resolutions, in an Officer’s Certificate (to which shall be attached true and correct copies of the relevant Board Resolution(s)) detailing such establishment) or established in a supplemental indenture, including the following:

(1) the designation of the particular series (which shall distinguish such series from all other series);

(2) the price or prices (which may be expressed as a percentage of the aggregate principal amount of the Securities being issued) at which the Securities of the series will be issued;

(3) the aggregate principal amount 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 this Indenture and except for any Securities which, pursuant to Section 2.06, are deemed never to have been authenticated and delivered hereunder);

(4) whether Securities of the series are to be issuable as Registered Securities, Bearer Securities (with or without coupons) or both, whether any Securities of the series are to be issuable initially in temporary global form with or without coupons and, if so, the name of the U.S. Depositary with respect to any such temporary global Security, and whether any Securities of the series are to be issuable in permanent global form with or without coupons and, if so, whether beneficial owners of interests in any such permanent global Security may exchange such interests for Securities of such series and of like tenor of any authorized form and denomination and the circumstances under which any such exchanges may occur, if other than in the manner provided in Section 2.07 and the name of the U.S. Depositary with respect to any such permanent global Security;

(5) the date as of which any Bearer Securities of such series and any temporary Security in global form representing Outstanding Securities of such series shall be dated, if other than the date of original issuance of the first Securities of the series to be issued;

(6) the person to whom any interest on any Registered 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, the manner in which, or the person to whom, any interest on any Bearer Security of the series shall be payable, if otherwise than upon presentation and surrender of the coupons appertaining thereto as they severally mature, the extent to which, or the manner in which, any interest payable on a temporary global Security on an interest payment date will be paid if other than in the manner provided in Section 2.05 and the extent to which, or the manner in which, any interest payable on a permanent global Security on an interest payment date will be paid;

(7) the date or dates on which the principal of the Securities of such series is payable;

(8) the rate or rates, and if applicable the method used to determine the rate, at which the Securities of such series shall bear interest, if any, the date or dates from which such interest shall accrue, the date or dates on which such interest shall be payable and the record date or dates for the interest payable on any Registered Securities on any interest payment date;

(9) the place or places at which, subject to the provisions of Section 4.02, the principal of (and premium, if any, on) and any interest on Securities of such series shall be payable, any Registered Securities of the series may be surrendered for registration of transfer, Securities of the series may be surrendered for exchange and notices and demands to or upon the Company in respect of the Securities of the series and this Indenture may be served;

(10) the obligation, if any, of the Company to redeem or purchase Securities of such series, at the option of the Company or at the option of a holder thereof, pursuant to any sinking fund or other redemption provisions and the period or periods within which, the price or prices at which and the terms and conditions upon which Securities of the series may be so redeemed or purchased, in whole or in part;

- (11) if other than minimum denominations of \$1,000 and any integral multiple thereof, the denominations in which any Registered Securities of such series shall be issuable, and the denomination or denominations in which any Bearer Securities of the series shall be issuable, if other than the minimum denomination of \$5,000;
- (12) if other than the principal amount thereof, the portion of the principal amount of Securities of such series which shall be payable upon declaration of acceleration of the maturity thereof;
- (13) the currency, currencies or currency units in which payment of the principal of (and premium, if any, on) and any interest on any Securities of the series shall be payable if other than the currency of the United States of America and the manner of determining the equivalent thereof in the currency of the United States of America for purposes of the definition of "Outstanding" in Section 1.01;
- (14) if the principal of (and premium, if any, on) or any interest on the Securities of the series is to be payable, at the election of the Company or a holder thereof, in one or more currencies or currency units, other than that or those in which the Securities are stated to be payable, the currency or currencies in which payment of the principal of (and premium, if any, on) and any interest on Securities of such series as to which such election is made shall be payable, and the periods within which and the terms and conditions upon which such election is to be made;
- (15) if the amount of payments of principal of (and premium, if any, on) or any interest on the Securities of the series may be determined with reference to an index, the manner in which such amounts shall be determined;
- (16) whether the Securities will be issued in book-entry only form;
- (17) any interest rate calculation agents, exchange rate calculation agents or other agents with respect to Securities of such series;
- (18) if either or both of Section 14.02 and Section 14.03 do not apply to the Securities of the series;
- (19) whether and under what circumstances the Company will pay Additional Amounts in respect of any series of Securities and whether the Company has the option to redeem such Securities rather than pay such Additional Amounts;
- (20) any provisions relating to the extension of maturity of, or the renewal of, Securities of such series, or the conversion of Securities of such series into other securities of the Company;
- (21) any provisions relating to the purchase or redemption of all or any portion of a tranche or series of Securities, including the period of notice required to redeem those Securities;

(22) the terms and conditions, if any, pursuant to which the Securities of the series are secured;

(23) the subordination terms of the Securities of the series; and

(24) any other terms of the Securities or provisions relating to the payment of principal of, premium (if any) or interest thereon, including, but not limited to, whether such Securities are issuable at a discount or premium, as amortizable Securities, and if payable in, convertible or exchangeable for commodities or for the securities of the Company.

All Securities of any one series need not be issued at the same time and may be issued from time to time, consistent with the terms of this Indenture, if so provided by or pursuant to the Board Resolution or Officer's Certificate referred to above or as set forth in a supplemental indenture, and, unless otherwise provided, the authorized principal amount of any series may be increased to provide for issuances of additional Securities of such series. If so provided by or pursuant to the Board Resolution or Officer's Certificate or supplemental indenture referred to above, the terms of such Securities to be issued from time to time may be determined as set forth in such Board Resolution, Officer's Certificate or supplemental indenture, as the case may be. All Securities of any one series shall be substantially identical except as to denomination, interest rate, maturity and other similar terms and except as may be provided otherwise by or pursuant to such Board Resolution, Officer's Certificate or supplemental indenture.

#### **SECTION 2.04. Securities in Global Form.**

If Securities of a series are issuable in global form, as specified as contemplated by Section 2.03(b), then, notwithstanding clause (11) of Section 2.03(b) and the provisions of Section 2.05, any such Security in global form shall represent such of the Securities of such series Outstanding as shall be specified therein, and any such Security in global form may provide that it shall represent the aggregate amount of Securities Outstanding from time to time endorsed thereon and that the aggregate amount of Securities Outstanding represented thereby may from time to time be reduced to reflect any exchanges of beneficial interests in such Security in global form for Securities of such series as contemplated herein. Any endorsement of a Security in global form to reflect the amount, or any decrease in the amount, of Securities Outstanding represented thereby shall be made by the Trustee or the Security Registrar in such manner and upon instructions given by such person or persons as shall be specified in such Security in global form or in the Company Order to be delivered to the Trustee pursuant to Section 2.06 or Section 2.08. Subject to the provisions of Section 2.06 and, if applicable, Section 2.08, the Trustee or the Security Registrar shall deliver and redeliver any Security in permanent global form in the manner and upon instructions given by the person or persons specified in such Security in global form or in the applicable Company Order. If a Company Order pursuant to Section 2.06 or Section 2.08 has been, or simultaneously is, delivered, any instructions by the Company with respect to endorsement or delivery or redelivery of a Security in global form shall be in writing but need not be represented by a Company Order and need not be accompanied by an Opinion of Counsel.

The provisions of the last sentence of Section 2.06 shall apply to any Security represented by a Security in global form if such Security was never issued and sold by the Company and the Company delivers to the Trustee or the Security Registrar the Security in global form together with written instructions (which need not be represented by a Company Order and need not be accompanied by an Opinion of Counsel) with regard to the reduction in the principal amount of Securities represented thereby, together with the written statement contemplated by the last sentence of Section 2.06.

Notwithstanding the provisions of Section 2.05, unless otherwise specified as contemplated by Section 2.03(b), payment of principal of and any premium and interest on any Security in permanent global form shall be made to the persons or persons specified therein.

**SECTION 2.05. Denominations; Record Date; Payment of Interest.**

(a) Unless otherwise provided as contemplated by Section 2.03(b) with respect to any series of Securities, any Registered Securities of a series shall be issuable without coupons in minimum denominations of \$1,000 and any Bearer Securities of a series shall be issuable, with interest coupons attached, in the minimum denomination of \$5,000.

(b) The term “record date” as used with respect to an interest payment date for any series of a Registered Security shall mean such day or days as shall be specified as contemplated by Section 2.03(b); provided, that in the absence of any such provisions with respect to any series, such term shall mean (1) the last day of the calendar month next preceding such interest payment date if such interest payment date is the 15th day of a calendar month; or (2) the 15th day of a calendar month next preceding such interest payment date if such interest payment date is the first day of the calendar month.

Unless otherwise provided as contemplated by Section 2.03 with respect to any series of Securities, the person in whose name any Registered Security is registered at the close of business on the record date with respect to an interest payment date shall be entitled to receive the interest payable on such interest payment date notwithstanding the cancellation of such Security upon any registration of transfer or exchange thereof subsequent to such record date prior to such interest payment date; provided, that if and to the extent the Company shall default in the payment of the interest due on such interest payment date, such defaulted interest shall be paid to the persons in whose names the Securities are registered on a subsequent record date established by notice given to the extent and in the manner set forth in Section 15.04 by or on behalf of the Company to the holders of Securities of the series in default not less than 15 days preceding such subsequent record date, such record date to be not less than five days preceding the date of payment of such defaulted interest, or in any other lawful manner acceptable to the Trustee.

(c) Unless otherwise specified by Board Resolution or Company Order for a particular series of Securities, the principal of, redemption premium, if any, on and interest, if any, on the Securities of any series shall be payable at the office or agency of the Company maintained pursuant to Section 4.02 in a Place of Payment for such series, in the coin or currency of the United States of America that at the time is legal tender for public and private debt; provided, that, at the option of the Company, payment of interest with respect to a Registered Security may be paid by check mailed to the holders of the Registered Securities entitled thereto at their last addresses as they appear on the Security Register or wired if held in book-entry form at the U.S. Depositary.

## **SECTION 2.06. Execution, Authentication, Delivery and Dating of Securities.**

The Securities shall be signed on behalf of the Company by its Chief Executive Officer, its President, any Vice President or its Chief Financial Officer. Such signatures may be the manual, electronic or facsimile signatures of such then-current officers.

Coupons shall bear the facsimile signature of the Secretary or one of the Assistant Secretaries of the Company or such other officer of the Company as may be specified pursuant to Section 2.03(b). Any Security or coupon may be signed on behalf of the Company by such persons as, at the actual date of the execution of such Security, shall be the proper officers of the Company, although at the date of the execution of this Indenture any such person was not such officer. Securities and coupons bearing the manual, electronic or facsimile signatures of individuals who were, at the actual date of the execution of such Security or coupon, 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 the delivery of such coupons, as the case may be, or did not hold such offices at the date of such Securities.

Upon the execution and delivery of this Indenture, the Company shall deliver to the Trustee an Officer's Certificate as to the incumbency and specimen signatures of officers authorized to execute and deliver the Securities and coupons and give instructions under this Section and, as long as Securities are Outstanding under this Indenture, shall deliver a similar Officer's Certificate each year on the anniversary of the date of the first such Officer's Certificate. The Trustee may conclusively rely on the documents delivered pursuant to this Section (unless revoked by superseding comparable documents) and Section 2.03 hereof as to the authorization of the Board of Directors of any Securities delivered hereunder, and the form and terms thereof, and as to the authority of the instructing officers referred to in this Section so to act.

The Trustee shall at any time, and from time to time, authenticate Securities for original issue in an unlimited aggregate principal amount upon receipt by the Trustee of a Company Order; provided, that with respect to Securities of a series subject to a Periodic Offering, (a) such Company Order may be delivered to the Trustee prior to the delivery to the Trustee of such Securities for authentication and delivery, (b) the Trustee shall authenticate and deliver Securities of such series for original issue from time to time, in an aggregate principal amount not exceeding the aggregate principal amount, if any, established for such series, pursuant to a Company Order or pursuant to such procedures acceptable to the Trustee as may be specified from time to time by a Company Order, (c) the maturity date or dates, original issue date or dates, interest rate or rates and any other terms of Securities of such series shall be determined by Company Order or pursuant to such procedures, and (d) if provided for in such procedures, such Company Order may authorize authentication and delivery pursuant to oral or electronic instructions from the Company or its duly authorized agent or agents, which oral instructions shall be promptly confirmed in writing. Except as permitted by Section 2.09, the Trustee shall not authenticate and deliver any Bearer Security unless all appurtenant coupons for interest then matured have been detached and cancelled.

Prior to the issuance of a Security of any new series and any related coupons, and the authentication thereof by the Trustee, the Trustee shall have received and (subject to Section 7.02) shall be fully protected in relying on:

(a) The Board Resolution or Officer's Certificate or supplemental indenture establishing the terms and the form of the Securities of that series pursuant to Section 2.01 and Section 2.03;

(b) An Officer's Certificate stating that all conditions precedent provided for in this Indenture relating to the authentication and delivery of Securities in such form have been complied with; and

(c) An Opinion of Counsel stating that the form and terms of such Securities and coupons, if any, have been established in conformity with the provisions of this Indenture; provided, that with respect to Securities of a series subject to a Periodic Offering, the Trustee shall be entitled to receive such Opinion of Counsel only once at or prior to the time of the first authentication of Securities of such series.

With respect to Securities of a series offered in a Periodic Offering, the Trustee may rely, as to the authorization by the Company of any of such Securities, the form and terms thereof, any coupons and the legality, validity, binding effect and enforceability thereof, upon the Opinion of Counsel and other documents delivered pursuant to this Section in connection with the first authentication of Securities of such series unless and until such Opinion of Counsel or other documents have been superseded or revoked. In connection with the authentication and delivery of Securities of a series subject to a Periodic Offering, the Trustee shall be entitled to assume that the Company's instructions to authenticate and deliver such Securities do not violate any rules, regulations or orders of any governmental agency or commission having jurisdiction over the Company.

Each Registered Security shall be dated the date of its authentication except as otherwise provided by Board Resolution or Officer's Certificate or supplemental indenture; and each Bearer Security shall be dated as of the date of original issuance of the first Security of such series to be issued unless otherwise specified pursuant to Section 2.03 hereof.

The aggregate principal amount of Securities of any series outstanding at any time may not exceed any limit upon the maximum principal amount for such series set forth in or pursuant to the Board Resolution or Officer's Certificate or supplemental indenture delivered pursuant to Section 2.03, except as provided in Section 2.08.

No Security or coupon shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security, or the Security to which such coupon appertains, a certificate of authentication substantially in the form provided for herein executed by the Trustee by manual signature, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder. 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 2.10 together with a written statement stating that such Security has never been issued and sold by the Company, 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 2.07. Exchange and Registration of Transfer of Securities.

(a) The Company shall keep, at an office or agency to be designated and maintained by the Company in accordance with Section 4.02 (as such, a "Security Registrar"), registry books (the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall register Registered Securities and shall register the transfer of Registered Securities of each such series as provided in this Article 2. Such Security Register shall be in written form or in any other form capable of being converted into written form within a reasonable time. At all reasonable times such Security Register shall be open for inspection by the Trustee. Upon due presentment for registration of transfer of any Registered Security of a particular series at such office or agency maintained pursuant to Section 4.02 for such purpose in a Place of Payment, the Company shall execute and register and the Trustee shall authenticate and make available for delivery in the name of the transferee or transferees a new Registered Security or Registered Securities of such series of any authorized denominations and for an equal aggregate principal amount and tenor.

(b) At the option of the holder, Registered Securities of any series may be exchanged for other Registered Securities of the same series of any authorized denominations and of an equal aggregate principal amount and tenor. Registered Securities to be exchanged shall be surrendered at any such office or agency maintained pursuant to Section 4.02 for such purpose in a Place of Payment, and the Company shall execute and register and the Trustee shall authenticate and make available for delivery in exchange therefor the Security or Securities that the securityholder making the exchange shall be entitled to receive. Registered Securities, including Registered Securities received in exchange for Bearer Securities, may not be exchanged for Bearer Securities, unless the Company otherwise expressly provides for the issuance, upon such terms and conditions as may be provided with respect to such series, by the Company of Registered Securities of a series that may be exchanged, at the option of the securityholder upon such conditions and limitations as may be specified by the Company, for Bearer Securities of such series.

At the option of the holder, Bearer Securities of any series may be exchanged for Registered Securities of the same series of any authorized denominations and of a like aggregate principal amount and tenor, upon surrender of the Bearer Securities to be exchanged at any such office or agency, with all unmatured coupons (except as provided below) and with all matured coupons in default appertaining thereto. If the holder of a Bearer Security is unable to produce any such unmatured coupon or coupons or matured coupon or coupons in default, such exchange may be effected if the Bearer Securities are accompanied by payment in funds acceptable to the Company in an amount equal to the face amount of such missing coupon or coupons, or the surrender of such missing coupon or coupons may be waived by the Company and the Trustee if there is furnished to them such security or indemnity as they may require to save each of them and any paying agent harmless. If thereafter the holder of such Securities shall surrender to any paying agent any such missing coupon in respect of which such a payment shall have been made, such holder shall be entitled to receive the amount of such payment; provided, that, except as otherwise provided in Section 4.02, interest represented by coupons shall be payable only upon presentation and surrender of those coupons at an office or agency located outside the United States and its Possessions. Notwithstanding the foregoing, in case a Bearer Security of any series is surrendered at any such office or agency in exchange for a Registered Security of the same series and like tenor after the close of business at such office or agency on (i) any record date and before the opening of business at such office or agency on the relevant interest payment date, or (ii) any special record date and before the opening of business at such office or agency on the related proposed date for payment of defaulted interest as set forth in Section 2.05, such Bearer Security shall be surrendered without the coupon relating to such interest payment date or proposed date for payment, as the case may be, and interest or defaulted interest, as the case may be, will not be payable on such interest payment date or proposed date for payment, as the case may be, in respect of the Registered Security issued in exchange for such Bearer Security, but will be payable only to the holder of such coupon when due in accordance with the provisions of this Indenture.

Whenever any Securities are so surrendered for exchange, the Company shall execute and register, and the Trustee shall authenticate and make available for delivery, the Securities which the holder making the exchange is entitled to receive.

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

All Registered Securities presented for registration of transfer or for exchange, redemption or payment, as the case may be, shall (if so required by the Company or the Trustee) be duly endorsed by, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company and the Trustee or the Security Registrar duly executed by, the holder thereof or his or her attorney duly authorized in writing.

No service charge shall be made for any exchange or registration of transfer 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 therewith, other than exchanges pursuant to the terms of this Indenture not involving any transfer.

The Company shall not be required (1) to exchange or register the transfer of Securities of any series to be redeemed for a period of 15 days next preceding any selection of such Securities to be redeemed, (2) to exchange or register the transfer of any Registered Security so selected, called or being called for redemption, except in the case of any such series to be redeemed in part the portion thereof not to be so redeemed, or (3) to exchange any Bearer Security so selected for redemption except that such a Bearer Security may be exchanged for a Registered Security of that series and of like tenor, provided that such Registered Security shall be simultaneously surrendered for redemption.

(d) Notwithstanding the foregoing, except as otherwise specified as contemplated by Section 2.03(b), any permanent global Security shall be exchangeable pursuant to this Section only as provided in this paragraph. If the beneficial owners of interests in a permanent global Security are entitled to exchange such interests for Securities of such series and of like tenor and principal amount of another authorized form and denomination, as specified as contemplated by Section 2.03(b), then without unnecessary delay but in any event not later than the earliest date on which such interests may be so exchanged, the Company shall deliver to the Trustee or the Security Registrar definitive Securities of that series in aggregate principal amount equal to the principal amount of such permanent global Security executed by the Company. On or after the earliest date on which such interests may be so exchanged, in accordance with instructions given by the Company to the Trustee or the Security Registrar and the U.S. Depositary (which instructions shall be in writing), such permanent global Security shall be surrendered from time to time by the U.S. Depositary, or such other depositary or U.S. Depositary, as the case may be, as shall be specified in the Company Order with respect thereto to the Trustee, as the Company's agent for such purpose, or to the Security Registrar, to be exchanged, in whole or in part, for definitive Securities of the same series without charge and the Trustee shall authenticate and make available for delivery in accordance with such instructions, in exchange for each portion of such permanent global Security, a like aggregate principal amount of definitive Securities of the same series of authorized denominations and of like tenor as the portion of such permanent global Security to be exchanged which (unless the Securities of the series are not issuable both as Bearer Securities and as Registered Securities, in which case the definitive Securities exchanged for the permanent global Security shall be issuable only in the form in which the Securities are issuable, as specified as contemplated by Section 2.03(b)), shall be in the form of Bearer Securities or Registered Securities, or any combination thereof, as shall be specified by the beneficial owner thereof; provided, that no such exchanges may occur for a period of 15 days next preceding any selection of Securities of that series and of like tenor for redemption; and provided further, that no Bearer Security delivered in exchange for a portion of a permanent global security shall be mailed or otherwise delivered to any location in the United States or its Possessions. Promptly following any such exchange in part, such permanent global Security should be returned by the Trustee or the Security Registrar to the U.S. Depositary, or such other depositary or U.S. Depositary referred to above in accordance with the instructions of the Company referred to above. If a Registered Security is issued in exchange for any portion of a permanent global Security after the close of business at the office or agency where such exchange occurs on (i) any record date and before the opening of business at such office or agency on the relevant interest payment date, or (ii) any special record date and before the opening of business at such office or agency on the related proposed date for payment of defaulted interest as provided in Section 2.05, interest or defaulted interest, as the case may be, will not be payable on such interest payment date or proposed date for payment, as the case may be, in respect of such Registered Security, but will be payable on such interest payment date or proposed date for payment, as the case may be, only to the person to whom interest in respect of such portion of such permanent global Security is payable in accordance with the provisions of this Indenture.

#### **SECTION 2.08. Temporary Securities.**

Pending the preparation of definitive Securities of any series, the Company may execute and the Trustee shall, upon Company Order, authenticate and make available for delivery, temporary Securities of such series (typewritten, printed, lithographed or otherwise produced). Such temporary Securities, in any authorized denominations, shall be substantially in the form of the definitive Securities in lieu of which they are issued, in registered form or, if authorized, in bearer form with one or more or without coupons, in the form approved from time to time by or pursuant to a Board Resolution but with such omissions, insertions, substitutions and other variations as may be appropriate for temporary Securities, all as may be determined by the Company, but not inconsistent with the terms of this Indenture or any provision of applicable law. In the case of any series issuable as Bearer Securities, such temporary Securities shall be delivered only in compliance with the conditions set forth in Section 2.06 and may be in global form.

Except in the case of temporary Securities in global form (which shall be exchanged as hereinafter provided), if temporary Securities of any series are issued, the Company will cause definitive Securities of that series to be prepared without unreasonable delay. After the preparation of definitive Securities of such series, the temporary Securities of such series shall be exchangeable for definitive Securities of such series upon surrender of the temporary Securities of such series at the office or agency of the Company maintained pursuant to Section 4.02 in a Place of Payment for such series for the purpose of exchanges of Securities of such series, without charge to the holder. Upon surrender for cancellation of any one or more temporary Securities of any series (accompanied by any unmatured coupons appertaining thereto), the Company shall execute and the Trustee shall authenticate and make available for delivery in exchange therefor a like aggregate principal amount of definitive Securities of the same series and of like tenor of authorized denominations; provided, that, except as otherwise expressly provided by the Company as contemplated in Section 2.07(b), no definitive Bearer Security shall be delivered in exchange for a temporary Registered Security; and provided further, however, that a definitive Bearer Security shall be delivered in exchange for a temporary Bearer Security only in compliance with the conditions set forth in Section 2.06.

Without unnecessary delay but in any event not later than the date specified in, or determined pursuant to the terms of, any such temporary global Security of a series (the "Exchange Date"), the Company shall deliver to the Trustee definitive Securities of that series, in aggregate principal amount equal to the principal amount of such temporary global Security, executed by the Company. On or after the Exchange Date such temporary global Security shall be presented and surrendered by the U.S. Depository to the Trustee, as the Company's agent for such purpose, or to the Security Registrar, to be exchanged, in whole or from time to time in part, for definitive Securities of such series without charge, and the Trustee shall authenticate and make available for delivery, in exchange for each portion of such temporary global Security, a like aggregate principal amount of definitive Securities of the same series of authorized denominations and of like tenor as the portion of such temporary global Security to be exchanged.

Every temporary Security shall be executed by the Company and shall be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with like effect, as the definitive Securities.

#### **SECTION 2.09. Mutilated, Destroyed, Lost or Stolen Securities and Coupons.**

If any mutilated Security or a Security with a mutilated coupon appertaining thereto is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and make available for delivery in exchange therefor a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously outstanding, with coupons corresponding to the coupons, if any, appertaining to the surrendered Security.

If there shall be delivered to the Company and the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Security or coupon and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Security or coupon has been acquired by a bona fide purchaser, the Company shall, subject to the following paragraph, execute and the Trustee shall authenticate and make available for delivery, in lieu of any such destroyed, lost or stolen Security or in exchange for the Security to which a destroyed, lost or stolen coupon appertains (with all appurtenant coupons not destroyed, lost or stolen), a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously outstanding, with coupons corresponding to the coupons, if any, appertaining to such destroyed, lost or stolen Security or to the Security to which such destroyed, lost or stolen coupon appertains.

In case any such mutilated, destroyed, lost or stolen Security or coupon 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 or coupon; provided, however, that principal of (and premium, if any, on) and any interest on Bearer Securities shall, except as otherwise provided in Section 4.02, be payable only at an office or agency located outside the United States and its Possessions.

Upon the issuance of any new Security under this Section, the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

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

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

#### **SECTION 2.10. Cancellation.**

All Securities surrendered for payment, redemption, exchange or registration of transfer or for credit against any sinking fund payment, as the case may be, and any coupons surrendered for payment, shall, if surrendered to the Company or any agent of the Company or of the Trustee, be delivered to the Trustee. All Registered Securities and matured coupons so delivered shall be promptly cancelled by the Trustee. All Bearer Securities and unmatured coupons so delivered shall be held by the Trustee, and upon instruction by a Company Order, shall be cancelled or held for reissuance. All Bearer Securities and unmatured coupons held by the Trustee pending such cancellation or reissuance shall be deemed to be delivered for cancellation for all purposes of this Indenture and the Securities. The Company may deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and may deliver to the Trustee (or to any other person for delivery to the Trustee) for cancellation any Securities previously authenticated hereunder which the Company has not issued and sold, and all Securities so delivered shall be promptly cancelled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section except as expressly provided by this Indenture. Any cancelled Securities and coupons held by the Trustee shall be delivered to the Company or disposed of (including by destruction of such Securities in accordance with the Trustee's customary procedures) as directed by the Company. Upon written request in the form of a Company Order, the Company may direct the Trustee to deliver a certificate of such disposal or destruction to the Company.

### **SECTION 2.11. Book Entry Only System.**

If specified by the Company pursuant to Section 2.03(b) with respect to Securities represented by a Security in global form, a series of Securities may be issued initially in book-entry only form and, if issued in such form, shall be represented by one or more Securities in global form registered in the name of the U.S. Depository or other depository designated with respect thereto. So long as such system of registration is in effect, (a) Securities of such series so issued in book-entry only form will not be issuable in the form of or exchangeable for Securities in certificated or definitive registered form, (b) the records of the U.S. Depository or such other depository will be determinative for all purposes and (c) neither the Company, the Trustee nor any paying agent, Security Registrar or transfer agent for such Securities will have any responsibility or liability for (i) any aspect of the records relating to or payments made on account of owners of beneficial interests in the Securities of such series, (ii) maintaining, supervising or reviewing any records relating to such beneficial interests, (iii) receipt of notices, voting and requesting or directing the Trustee to take, or not to take, or consenting to, certain actions hereunder, or (iv) the records and procedures of the U.S. Depository or such other depository, as the case may be.

## **ARTICLE 3 REDEMPTION OF SECURITIES**

### **SECTION 3.01. Redemption of Securities, Applicability of Section.**

Redemption of Securities of any series as permitted or required by the terms thereof shall be made in accordance with the terms of such Securities as specified pursuant to Section 2.03 hereof and this Article; provided, however, that if any provision of any series of Securities shall conflict with any provision of this Section, the provision of such series of Securities shall govern.

### **SECTION 3.02. Notice of Redemption, Selection of Securities.**

In case the Company shall desire to exercise the right to redeem all or, as the case may be, any part of a series of Securities pursuant to Section 3.01, it shall fix a date for redemption. 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. The Company or the Trustee, as the case may be, shall give notice of such redemption, in the manner and to the extent set forth in Section 15.04, on that date prior to the date fixed for a redemption to the holders of such Securities so to be redeemed, as a whole or in part, (a) as set forth in a Board Resolution, as described in Section 2.03, or (b) as determined by the Chief Executive Officer or the Chief Financial Officer of the Company (each, an "Authorized Officer") and evidenced by the preparation of an offering document or an Officer's Certificate specifying the period of notice of such redemption. If the Board Resolutions or an Authorized Officer do not specify a period of notice of such redemption, the Company or the Trustee, as the case may be, shall give notice of such redemption, in the manner and to the extent set forth in Section 15.04, at least 10 Business Days and not more than 60 calendar days prior to the date fixed for a redemption to the holders of such Securities so to be redeemed as a whole or in part. Notice given in such manner shall be conclusively presumed to have been duly given, whether or not the holder receives such notice. In any case, failure to give such notice or any defect in the notice to the holder of any such Security designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other such Security. If the Company requests the Trustee to give any notice of redemption, it shall make such request at least 10 days prior to the designated date for delivering such notice, unless a shorter period is satisfactory to the Trustee.

Each such notice of redemption shall specify the date fixed for redemption, the redemption price at which such Securities are to be redeemed, the CUSIP numbers of such Securities, the Place of Payment where such Securities, together, in the case of Bearer Securities, with all coupons appertaining thereto, if any, maturing after the date of redemption, are to be surrendered for payment of the redemption prices, that payment will be made upon presentation and surrender of such Securities, that interest accrued to the date fixed for redemption will be paid as specified in the notice, and that on and after the date interest thereon or on the portions thereof to be redeemed will cease to accrue. If less than all of a series is to be redeemed, the notice of redemption shall specify the numbers of the Securities to be redeemed or, in the case of global securities, the portion of such global securities. In case any Security is to be redeemed in part only, the notice of redemption shall state the portion of the principal amount thereof to be redeemed and shall state that, upon surrender of such Security, a new Security or Securities of the same series in principal amount equal to the unredeemed portion thereof will be issued or, in the case of a global security, the books and records of the U.S. Depository and the Security Registrar or the Trustee will reflect the reduction in the principal amount of such global security as a result of such partial redemption.

On or before the redemption date specified in the notice of redemption given as provided in this Section, the Company will deposit in trust with the Trustee or with one or more paying agents an amount of money sufficient to redeem on the redemption date all the Securities or portions of Securities so called for redemption at the appropriate redemption price, together with accrued interest, if any, to the date fixed for redemption. If less than all of a series of Securities is to be redeemed, the Company will give the Trustee adequate written notice at least 45 days in advance (unless a shorter notice shall be satisfactory to the Trustee) as to the aggregate principal amount of Securities to be redeemed.

If less than all the Securities of a series are to be redeemed, the Trustee shall select, pro rata, by lot or in such other manner as it shall deem appropriate and fair (subject to the customary procedures of any depository or exchange), not more than 60 days prior to the date of redemption, the numbers of such Securities Outstanding not previously called for redemption, to be redeemed in whole or in part. The portion of principal of Securities so selected for partial redemption shall be equal to the minimum authorized denomination for Securities of that series or any integral multiple thereof. The Trustee shall promptly notify the Company of the Securities to be redeemed. If, however, less than all the Securities of a series having differing issue dates, interest rates and stated maturities are to be redeemed, the Company in its sole discretion shall select the particular Securities of such series to be redeemed and shall notify the Trustee in writing at least 45 days prior to the relevant redemption date.

### **SECTION 3.03. Payment of Securities Called for Redemption.**

If notice of redemption has been given as above provided, the Securities or portions of Securities with respect to which such notice has been given shall become due and payable on the date and at the place stated in such notice at the applicable redemption price, together with any interest accrued to the date fixed for redemption, and on and after that date (unless the Company shall default in the payment of such Securities at the redemption price, together with interest accrued to that date) interest on such Securities or portions of Securities so called for redemption shall cease to accrue and the coupons, if any, for such interest appertaining to any Bearer Securities so to be redeemed, except to the extent provided below, shall be void. On presentation and surrender of such Securities subject to redemption at the Place of Payment and in the manner specified in such notice, together with all coupons, if any, appertaining thereto and maturing after the date specified in such notice for redemption, such Securities or the specified portions thereof shall be paid and redeemed by the Company at the applicable redemption price, together with interest accrued thereon to the date fixed for redemption; provided, that installments of interest on Bearer Securities whose stated maturity date is on or prior to the date of redemption shall be payable only at an office or agency located outside the United States and its Possessions (except as otherwise provided in Section 4.02) and, unless otherwise specified as contemplated by Section 2.03, only upon presentation and surrender of coupons for such interest; and provided further, that unless otherwise specified as contemplated by Section 2.03, installments of interest on Registered Securities whose stated maturity date is on or prior to the date of redemption shall be payable to the holders of such Registered 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 2.05.

At the option of the Company, payment with respect to Registered Securities may be made by check to the holders of such Securities or other persons entitled thereto against presentation and surrender of such Securities.

If any Bearer Security surrendered for redemption shall not be accompanied by all appurtenant coupons maturing after the date of redemption, such Security may be paid after deducting from the redemption price an amount equal to the face amount of all such missing coupons, or the surrender of such missing coupon or coupons may be waived by the Company and the Trustee if there is furnished to them such security or indemnity as they may require to save each of them and any paying agent harmless. If thereafter the holder of such Security shall surrender to the Trustee or any paying agent any such missing coupon in respect of which a deduction shall have been made from the redemption price, such holder shall be entitled to receive the amount so deducted; provided, that interest represented by coupons shall be payable only at an office or agency located outside the United States and its Possessions (except as otherwise provided in Section 4.02) and, unless otherwise specified as contemplated by Section 2.03, only upon presentation and surrender of those coupons.

Any Security (including any coupons appertaining thereto) that is to be redeemed only in part shall be surrendered at a Place of Payment therefor (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the holder thereof or such holder's attorney duly authorized in writing), and upon such presentation, the Company shall execute and the Trustee shall authenticate and make available for delivery to the holder thereof, at the expense of the Company, a new Security or Securities of the same series, of authorized denominations, in aggregate principal amount equal to the unredeemed portion of the principal of the Security so presented. If a temporary global Security or permanent global Security is so surrendered, such new Security so issued shall be a new temporary global Security or permanent global Security, respectively.



#### **SECTION 3.04. Redemption Suspended During Event of Default.**

The Trustee shall not redeem any Securities (unless all Securities then outstanding are to be redeemed) or commence the giving of any notice of redemption of Securities during the continuance of any Event of Default of which a Responsible Officer of the Trustee has actual knowledge or notice, except that where the giving of notice of redemption of any Securities shall theretofore have been made, the Trustee shall redeem such Securities, provided funds are deposited with it for such purpose. Except as aforesaid, any moneys theretofore or thereafter received by the Trustee shall, during the continuance of such Event of Default, be held in trust for the benefit of the securityholders and applied in the manner set forth in Section 6.06; provided, that in case such Event of Default shall have been waived as provided herein or otherwise cured, such moneys shall thereafter be held and applied in accordance with the provisions of this Article.

### **ARTICLE 4 PARTICULAR COVENANTS OF THE COMPANY**

#### **SECTION 4.01. Payment of Principal, Premium and Interest.**

The Company will duly and punctually pay or cause to be paid the principal of (and premium, if any, on) and any interest on each of the Securities of a series at the place, at the respective times and in the manner provided in the terms of the Securities, any coupons appertaining thereto and this Indenture. Unless otherwise specified as contemplated by Section 2.03(b) with respect to any series of Securities, any interest due on and any Additional Amounts payable in respect of Bearer Securities on or before maturity shall be payable only upon presentation and surrender of the several coupons for such interest installments as are evidenced thereby as they severally mature.

#### **SECTION 4.02. Offices for Notices and Payments, etc.**

If Securities of a series are issuable only as Registered Securities, the Company will maintain in each Place of Payment for such series 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. If Securities of a series are issuable as Bearer Securities, the Company will maintain (a) in the contiguous United States, an office or agency where any Registered Securities of that series may be presented or surrendered for payment, where any Registered Securities of that series may be surrendered for registration of transfer, where Securities of that series may be surrendered for exchange, where notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be served and where Bearer Securities of that series and related coupons may be presented or surrendered for payment in the circumstances described below (and not otherwise), (b) subject to any laws or regulations applicable thereto, in a Place of Payment for that series which is located outside the United States and its Possessions, an office or agency where Securities of that series and related coupons may be presented and surrendered for payment; provided, that if the Securities of that series are listed on The International Stock Exchange of the United Kingdom and the Republic of Ireland, Limited, the Luxembourg Stock Exchange or any other stock exchange located outside the United States and its Possessions and such stock exchange shall so require, the Company will maintain a paying agent for the Securities of that series in London, Luxembourg or any other required city located outside the United States and its Possessions, as the case may be, so long as the Securities of that series are listed on such exchange, and (c) subject to any laws or regulations applicable thereto, in a Place of Payment for that series which is located outside the United States and its Possessions, an office or agency where any Registered Securities of that series may be surrendered for registration of transfer, where Securities of that series may be surrendered for exchange and where notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be served.

The Company will give to the Trustee notice of the location of each such office or agency and of any change in the location thereof. In case the Company shall fail to maintain any such office or agency as required, or shall fail to give such notice of the location or of any change in the location thereof, presentations and surrenders of Securities of that series may be made and notices and demands may be served at the Corporate Trust Office of the Trustee, except that Bearer Securities of that series and the related coupons may be presented and surrendered for payment at any paying agent for such series located outside the United States and its Possessions.

No payment of principal, premium or interest on Bearer Securities shall be made at any office or agency of the Company in the United States or its Possessions or by check mailed to any address in the United States or its Possessions or by transfer to any account maintained with a financial institution located in the United States or its Possessions; provided, that, if the Securities of a series are denominated and payable in Dollars, payment of principal of (and premium, if any) and any interest on any Bearer Security shall be made at the office of the Company's paying agent in the contiguous United States, if (but only if) payment in Dollars of the full amount of such principal, premium, interest or Additional Amounts, as the case may be, at all offices or agencies outside the United States and its Possessions maintained for the purpose by the Company in accordance with this Indenture is illegal or effectively precluded by exchange controls or other similar restrictions.

The Company may also from time to time designate one or more other offices or agencies where the Securities of one or more series may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in accordance with the requirements set forth above for Securities of any series for such purposes. The Company will give prompt written notice to the Trustee and the holders of any such designation or rescission and of any change in the location of any such other office or agency.

The Company hereby initially designates the Corporate Trust Office as the office of the Company in the contiguous United States where Registered Securities may be presented for payment, for registration of transfer and for exchange as in this Indenture provided and where notices and demands to or upon the Company in respect of the Securities or of this Indenture may be served; provided that the Corporate Trust Office shall not be an office or agency of the Company for the service of legal process against the Company.

#### **SECTION 4.03. Provisions as to Paying Agent.**

(a) Whenever the Company shall appoint a paying agent other than the Trustee with respect to the Securities of any series, it will cause such paying agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section:

(1) that it will hold sums held by it as such agent for the payment of the principal of (and premium, if any, on) or any interest on the Securities of such series (whether such sums have been paid to it by the Company or by any other obligor on the Securities of such 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 and will notify the Trustee of the receipt of sums to be so held;

(2) that it will give the Trustee notice of any failure by the Company (or by any other obligor on the Securities of such series) to make any payment of the principal of (or premium, if any, on) or any interest on the Securities of such series when the same shall be due and payable; and

(3) that at any time when any such failure has occurred and is continuing, it will, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such paying agent.

(b) If the Company shall act as its own paying agent, it will, on or before each due date of the principal of (and premium, if any) or any interest on the Securities of any series, set aside, segregate and hold in trust for the benefit of the persons entitled thereto a sum sufficient to pay such principal (and premium, if any) or any interest so becoming due until such sums shall be paid to such persons or otherwise disposed of as herein provided. The Company will promptly notify the Trustee of any failure to take such action.

(c) Whenever the Company shall have one or more paying agents with respect to a series of Securities, it will, on or prior to each due date of the principal of (and premium, if any, on) or any interest on, any Securities, deposit with a paying agent a sum sufficient to pay the principal (and premium, if any) or any interest so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal, premium or interest, and (unless such paying agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

(d) Anything in this Section to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture with respect to one or more or all series of Securities hereunder, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust for such series by it or any paying agent hereunder as required by this Section, such sums to be held by the Trustee upon the trusts herein contained, 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) Anything in this Section to the contrary notwithstanding, the agreement to hold sums in trust as provided in this Section is subject to the provisions of Section 12.03 and Section 12.04.

**SECTION 4.04. Statement as to Compliance.**

The Company will deliver to the Trustee, within 120 days after the end of each fiscal year of the Company, commencing with the fiscal year ending in the year during which the first series of Securities is issued hereunder (but in no event more than one year from the issuance of the first series hereunder), a written statement signed by the Chief Executive Officer or other principal executive officer and by the Chief Financial Officer or other principal financial officer or principal accounting officer of the Company, stating, as to each signer thereof, that:

(a) a review of the activities of the Company during such year and of performance under this Indenture has been made under his or her supervision; and

(b) to the best of his or her knowledge, based on such review, the Company has fulfilled all its obligations under this Indenture throughout such year, or, if there has been a default in the fulfillment of any such obligation, specifying each such default known to him or her and the nature and status thereof.

**SECTION 4.05. Corporate Existence.**

Subject to the provisions of Article 11, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, rights (charter and statutory) and franchises and the corporate existence and rights (charter and statutory) and franchises of its Subsidiaries; provided, that the Company shall not be required to, or to cause any Subsidiary to, preserve any right or franchise or to keep in full force and effect the corporate existence of any Subsidiary if the Company shall determine that the keeping in existence or preservation thereof is no longer desirable in or consistent with the conduct of the business of the Company.

**SECTION 4.06. Waiver of Covenants.**

The Company may omit in any particular instance to comply with any covenant or condition set forth herein if before or after the time for such compliance the holders of a majority in principal amount of the Securities of all series affected thereby then Outstanding shall either waive such compliance in such instance or generally waive compliance with such covenant or condition, but no such waiver shall extend to or affect such covenant or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such covenant or condition shall remain in full force and effect.

**SECTION 5.01. Securityholder Lists.**

The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee as the Trustee may request in writing, a list, in such form and as of such date as the Trustee may reasonably require, of all information in the possession or control of the Company as to the names and addresses of the holders of Registered Securities of a particular series specified by the Trustee; provided, that if and so long as the Trustee shall be the Security Registrar with respect to such series, such list shall not be required to be furnished.

**SECTION 5.02. Preservation and Disclosure of Lists.**

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the holders of each series of Securities contained in the most recent list furnished to it as provided in Section 5.01 or received by the Trustee in its capacity as Security Registrar. The Trustee may destroy any list furnished to it as provided in Section 5.01 upon receipt of a new list so furnished.

(b) Securityholders may communicate as provided in Section 312(b) of the Trust Indenture Act with other securityholders with respect to their rights under this Indenture or under the Securities. The Company, the Trustee, the Security Registrar and anyone else shall have the protection of Section 312(c) of the Trust Indenture Act with respect to the sending of any material pursuant to a request made pursuant to Section 312(b) of the Trust Indenture Act.

**SECTION 5.03. Reports by the Company.**

The Company covenants so long as Securities are Outstanding:

(a) to file with the Trustee, within 15 days after the Company is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) that the Company may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act; or, if the Company is not required to file information, documents or reports pursuant to either of such sections, then to file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports that may be required pursuant to Section 13 of the Exchange Act in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations;

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

(c) to transmit by mail, or, in the case of global securities, by notice delivered in accordance with the applicable procedures of the U.S. Depository, to all the holders of Registered Securities of each series, as the names and addresses of such holders appear on the registry books, within 30 days after the filing thereof with the Trustee, such summaries of any information, documents and reports required to be filed by the Company with respect to each such series pursuant to subsections (a) and (b) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

#### **SECTION 5.04. Reports by the Trustee.**

(a) On or about [\_\_\_\_\_, \_\_\_\_\_], so long as any Securities are outstanding hereunder and if there has been any change in the following, the Trustee shall transmit by mail, first class postage prepared, to the securityholders, as their names appear upon the Security Register, a brief report dated as of the preceding [\_\_\_\_\_, \_\_\_\_\_], if and to the extent required under Section 313(a) of the Trust Indenture Act, detailing certain events that occurred within the previous 12 months.

(b) The Trustee shall comply with Sections 313(b) and 313(c) of the Trust Indenture Act.

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

### **ARTICLE 6 REMEDIES**

#### **SECTION 6.01. Events of Default; Acceleration of Maturity.**

In case one or more of the following Events of Default with respect to a particular series shall have occurred and be continuing:

(a) default in (i) the payment of the principal of (or premium, if any, on) any of the Securities of such series as and when the same shall become due and payable either at maturity, upon redemption, by declaration or otherwise or (ii) any payment required by any sinking or analogous fund established with respect to that series;

(b) default in the payment of any installment of interest upon any of the Securities of such series as and when the same shall become due and payable, and continuance of such default for a period of 90 days;

(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 contained in the Securities 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, or to the Company and the Trustee by the holders of at least 25% in aggregate principal amount of the Securities of that series at the time Outstanding;

(d) a court having jurisdiction in the premises shall enter a decree or order for relief in respect of the Company or the Material Subsidiary in an involuntary case or proceeding under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Company or any Material Subsidiary or for any substantial part of their respective property, or ordering the winding-up or liquidation of its affairs and such decree or order shall remain unstayed and in effect for a period of 60 consecutive days;

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

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

then, if an Event of Default described in clause (a), (b), (c) or (f) shall have occurred and be continuing, and in each and every such case, unless the principal amount of all the Securities of such series shall have already become due and payable, either the Trustee or the holders of not less than 25% in aggregate principal amount of the Securities of that series then Outstanding hereunder, by notice in writing to the Company (and to the Trustee if given by securityholders) may declare the principal amount of all the Securities (or, with respect to Original Issue Discount Securities, such lesser amount as may be specified in the terms of such Securities) of that series to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Securities of such series contained to the contrary notwithstanding; or, if an Event of Default described in clause (d) or (e) shall have occurred and be continuing, and in each and every such case, unless the principal of all the Securities of such series shall have already become due and payable, the principal amount of all the Securities (or, with respect to Original Issue Discount Securities, such lesser amount as may be specified in the terms of such Securities) shall be automatically deemed immediately due and payable.

#### **SECTION 6.02. Rescission and Annulment.**

The provisions in Section 6.01 are subject to the condition that if, at any time after the principal of the Securities of any one or more of all series, as the case may be, shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay all matured installments of interest upon all the Securities of such series or of all the Securities, as the case may be, and the principal of (and premium, if any, on) all Securities of such series or of all the Securities, as the case may be (or, with respect to Original Issue Discount Securities, such lesser amount as may be specified in the terms of such Securities), which shall have become due otherwise than by acceleration (with interest upon such principal and premium, if any) and, to the extent that payment of such interest is enforceable under applicable law, on overdue installments of interest, at the same rate as the rate of interest specified in the Securities of such series or all Securities, as the case may be (or, with respect to Original Issue Discount Securities, at the rate specified in the terms of such Securities for interest on overdue principal thereof upon maturity, redemption or acceleration of such series, as the case may be), to the date of such payment or deposit, and such amount as shall be sufficient to cover reasonable compensation to the Trustee, its agents, attorneys and counsel, and all other expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its negligence, bad faith or willful misconduct, and any and all defaults under the Indenture, other than the non-payment of the principal of Securities that has become due by acceleration, shall have been remedied; then and in every such case the holders of a majority in aggregate principal amount of the Securities of such series (or of all the Securities, as the case may be) then Outstanding, by written notice to the Company and to the Trustee, may waive all defaults with respect to that series or with respect to all Securities, as the case may be in such case, treated as a single class and rescind and annul such declaration and its consequences; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent default or shall impair any right consequent thereon.

In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned because of such rescission and annulment or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Company, the Trustee and the securityholders, as the case may be, shall be restored respectively to their former positions and rights hereunder, and all rights, remedies and powers of the Company, the Trustee and the securityholders, as the case may be, shall continue as though no such proceedings had been taken.

**SECTION 6.03. Collection of Indebtedness and Suits for Enforcement by Trustee.**

The Company covenants that if:

(a) default is made in the payment of any installment of interest on any Security when such interest becomes due and payable and such default continues for a period of 90 days,

(b) default is made in the payment of the principal or premium, if any, of any Security at the maturity thereof, including any maturity occurring by reason of a call for redemption or otherwise, or

(c) default is made in the deposit of any sinking fund payment when and as due by the terms of a Security, the Company will, upon demand of the Trustee, pay to it, for the benefit of the holders of such Securities and any coupons appertaining thereto, the whole amount that shall have become due and payable on such Securities and coupons for principal or premium, if any, and interest, with interest upon the overdue principal and, to the extent that payment of such interest shall be legally enforceable, upon overdue installments of interest, at the rate borne by such Securities; and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

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



If an Event of Default occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the securityholders 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 6.04. Trustee May File Proofs of Claim.**

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

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

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

and any receiver, assignee, trustee, liquidator or sequestrator (or other similar official) in any such judicial proceeding is hereby authorized by each holder of Securities and coupons to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the holders of Securities and coupons, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.06. To the extent that such payment of reasonable compensation, expenses, disbursements, advances and other amounts out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, moneys, securities and other property which the holders of the Securities and coupons may be entitled to receive in such proceedings, whether in liquidation or under any plan or reorganization or arrangements or otherwise.

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

**SECTION 6.05. Trustee May Enforce Claims Without Possession of Securities or Coupons.**

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

In any proceedings brought by the Trustee (and in any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the holders of Securities, and it shall not be necessary to make any holder of Securities parties to any such proceedings.

In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Company, the holders of Securities and the Trustee shall, subject to any determination in such proceeding, be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Company, the holder of Securities and the Trustee shall continue as though no such proceeding had been instituted.

**SECTION 6.06. Application of Money Collected.**

Any money collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal or premium, if any, or any interest, upon presentation of the Securities or coupons, or both, as the case may be, and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee under Section 7.06;

SECOND: To the payment of all Senior Indebtedness of the Company if and to the extent required by Article 16;

THIRD: To the payment of the amounts then due and unpaid upon the Securities for principal of and premium, if any, and any interest on the Securities and coupons, in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities and coupons, for principal and any interest, respectively; and

FOURTH: The balance, if any, to the Company or its successors or assigns, or to whomsoever may be lawfully entitled to receive the same.

### **SECTION 6.07. Limitation on Suits.**

No holder of any Security of any series or any related coupons shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

(1) such holder has previously given written notice to the Trustee of a continuing Event of Default;

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

(3) such holder or holders have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;

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

(5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the holders of a majority in aggregate principal amount of the Outstanding Securities;

it being understood and intended, and being expressly covenanted by the taker and holder of every Security with every other taker and holder of Security and the Trustee that no one or more such holders of Securities shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other of such holders of Securities or to obtain or to seek to obtain priority over or preference to 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 of Securities. For the protection and enforcement of this Section 6.07, each and every holder of Securities and the Trustee shall be entitled to such relief as can be given either at law or in equity

### **SECTION 6.08. Unconditional Right of Securityholders to Receive Principal and Interest.**

Notwithstanding any other provision in this Indenture, the holder of any Security or coupon shall have the right, which is absolute and unconditional, to receive payment of the principal of and premium, if any, and (subject to Section 2.05 and Section 3.02) any interest on such Security or payment of such coupon on the respective stated maturities expressed in such Security or coupon (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.

### **SECTION 6.09. Restoration of Rights and Remedies.**

If the Trustee or any holder of a Security or coupon 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 or to such holder, then and in every such case the Company, the Trustee and the holders of Securities and coupons shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Trustee and the holders shall continue as though no such proceeding has been instituted.

#### **SECTION 6.10. Rights and Remedies Cumulative.**

Except as provided in Section 2.09, no right or remedy herein conferred upon or reserved to the Trustee or to the holders of Securities or coupons 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 6.11. Delay or Omission Not Waiver.**

No delay or omission of the Trustee or of any holder of any Security or coupon to exercise any right or remedy accruing upon any Default shall impair any such right or remedy or constitute a waiver of any such Default or any acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the holders of Securities or coupons may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the holders of Securities or coupons, as the case may be.

#### **SECTION 6.12. Control by Securityholders.**

The holders of a majority in principal amount of Outstanding Securities of each 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, provided that:

(1) such direction shall not be in conflict with any statute, rule of law or with this Indenture;

(2) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction; and

(3) the Trustee need not take any action which it in good faith determines might involve it in personal liability or be unjustly prejudicial to the securityholders not consenting.

Upon receipt by the Trustee of any such direction with respect to Securities of a series all or part of which is represented by a temporary global Security or a permanent global Security, the Trustee shall establish a record date for determining holders of Outstanding Securities of such series entitled to join in such direction, which record date shall be at the close of business on the day the Trustee receives such direction. The holders on such record date, or their duly designated proxies, and only such persons, shall be entitled to join in such direction, whether or not such holders remain holders after such record date; provided that, unless such majority in principal amount shall have been obtained prior to the day which is 90 days after such record date, such direction shall automatically and without further action by any holder be cancelled 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 direction identical to a direction which has been cancelled 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 6.12.

### **SECTION 6.13. Waiver of Past Defaults.**

The holders of a majority in principal amount of the Securities of each series at the time Outstanding may, on behalf of the holders of all the Securities of that series and any coupons appertaining thereto, waive any past default hereunder and its consequences, except a default:

(1) in the payment of the principal of, premium, if any, or any interest on any Security;

(2) described in clauses (d) or (e) of Section 6.01; or

(3) in respect of a covenant or provision hereof that pursuant to Article 10 cannot be modified or amended without the consent of the holder of each Outstanding Security affected.

Upon any such waiver, such 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 Indenture, but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

### **SECTION 6.14. Undertaking for Costs.**

All parties to this Indenture agree, and each holder of any Security or coupon by his or her acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Trustee, to any suit instituted by any holder, or group of holders, holding in the aggregate more than 10% in principal amount of the Outstanding Securities of any series, or to any suit instituted by any holder of any Securities or coupons for the enforcement of the payment of the principal of, premium, if any, or any interest on any Security or the payment of any coupon on or after the respective stated maturities expressed in such Security or coupon (or, in the case of redemption, on or after the redemption date, except, in the case of a partial redemption, with respect to the portion not so redeemed).

### **SECTION 6.15. 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 laws 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 benefits or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

**ARTICLE 7  
CONCERNING THE TRUSTEE**

**SECTION 7.01. Duties and Responsibilities of Trustee.**

(a) The Trustee, prior to the occurrence of an Event of Default of a particular series and after the curing of all Events of Default of such series which may have occurred, undertakes to perform such duties and only such duties with respect to such series as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee. In the absence of bad faith on the part of the Trustee, the 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 Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture.

(b) In case an Event of Default with respect to a particular series has occurred (which has not been cured), the Trustee shall exercise with respect to such series such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

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

(1) prior to the occurrence of an Event of Default with respect to a particular series and after the curing of all Events of Default with respect to such series which may have occurred, the duties and obligations of the Trustee with respect to such series shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee;

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

(3) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of Securities pursuant to Section 6.12 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.

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

## **SECTION 7.02. Reliance on Documents, Opinions, etc.**

Subject to the provisions of Section 7.01:

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

(b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order (unless other evidence in respect thereof be herein specifically prescribed); and any Board Resolution may be evidenced to the Trustee by a copy thereof certified by the Secretary or any Assistant Secretary of the Company; and 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 Officer's Certificate;

(c) the Trustee may consult with counsel and the written advice of such counsel and 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;

(d) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the holders of any Securities or any related coupons pursuant to the provisions of this Indenture, unless such holders shall have offered to the Trustee security or indemnity reasonably satisfactory to the Trustee against the losses, costs, expenses and liabilities which might be incurred therein or thereby;

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

(f) 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;

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

(h) in no event shall the Trustee be liable to any person for special, punitive, indirect, consequential or incidental loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action; and

(i) the Trustee shall not be required to give any bond or surety in respect of the execution of the trusts and powers or otherwise in respect of the Indenture.

**SECTION 7.03. No Responsibility for Recitals, etc.**

The recitals contained herein and in the Securities, other than the Trustee's certificate of authentication, and in any coupons shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities or coupons, provided that the Trustee shall not be relieved of its duty to authenticate Securities only as authorized by this Indenture. The Trustee shall not be accountable for the use or application by the Company of Securities or the proceeds thereof.

**SECTION 7.04. Ownership of Securities.**

The Trustee, any authenticating agent, any paying agent, any Security Registrar or any other agent of the Company or of the Trustee, in its individual or any other capacity, may become the owner or pledgee of Securities and coupons with the same rights it would have if it were not Trustee, authenticating agent, paying agent, Security Registrar or such other agent of the Company or of the Trustee.

**SECTION 7.05. Moneys to be Held in Trust.**

Subject to the provisions of Section 12.04 hereof, all moneys received by the Trustee or any paying agent shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by law. Neither the Trustee nor any paying agent shall be under any liability for interest on any moneys received by it hereunder except such as it may agree in writing with the Company to pay thereon.

**SECTION 7.06. Compensation and Expenses of Trustee.**

The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, such compensation for all services rendered by it hereunder as the Company and the Trustee shall from time to time agree in writing (which to the extent permitted by law shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust), and, except as otherwise expressly provided, the Company will pay or reimburse the Trustee forthwith upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and of all persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its negligence, bad faith or willful misconduct. If any property other than cash shall at any time be subject to the lien of this Indenture, the Trustee, if and to the extent authorized by a receivership or bankruptcy court of competent jurisdiction or by the supplemental instrument subjecting such property to such lien, shall be entitled to make and to be reimbursed for, advances for the purpose of preserving such property or of discharging tax liens or other prior liens or encumbrances thereon. The Company also covenants to indemnify the Trustee for, and to hold it harmless against, any and all loss, damage, claims, liability or expense, including taxes (other than taxes based upon, measured or determined by, the income of the Trustee) incurred without negligence, bad faith or willful misconduct on the part of the Trustee, as determined by a final, non-appealable judgment of a court of competent jurisdiction, arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of defending itself against any claim of liability and enforcing the provisions of this Section 7.06. The Trustee shall notify the Company promptly of any third party claim for which it may seek indemnity. The obligations of the Company under this Section shall constitute additional indebtedness hereunder. Such additional indebtedness shall be secured by a lien prior to that of the Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the holders of particular Securities.



To secure the Company's obligations under this Section, the Trustee shall have a senior claim to which the Securities are hereby made subordinate on all money or property held or collected by the Trustee, except that held in trust to pay principal of (and premium, if any) and interest, if any, on particular Securities.

When the Trustee incurs expenses or renders services after an Event of Default, such expenses (including the fees and expenses of its counsel) and the compensation for the services are intended to constitute administrative expenses for purposes of priority under any bankruptcy law.

The Company's obligations under this Section 7.06 shall survive satisfaction and discharge of the Indenture, payment of the Securities and any resignation or removal of the Trustee hereunder.

**SECTION 7.07. Officer's Certificate as Evidence.**

Subject to the provisions of Section 7.01, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action to be taken hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence, bad faith or willful misconduct on the part of the Trustee, be deemed to be conclusively proved and established by an Officer's Certificate delivered to the Trustee, and such certificate, in the absence of negligence, bad faith or willful misconduct on the part of the Trustee, shall be full warrant to the Trustee for any action taken, suffered or omitted by it under the provisions of this Indenture upon the faith thereof.

**SECTION 7.08. Disqualifications; Conflicting Interest of Trustee.**

If the Trustee has or shall acquire any "conflicting interest" within the meaning of the Trust Indenture Act, the Trustee and the Company shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act.

#### **SECTION 7.09. Eligibility of Trustee.**

There shall at all times be a Trustee hereunder which shall be a corporation organized and doing business under the laws of the United States or of any State or Territory thereof or of the District of Columbia, which (a) is authorized under such laws to exercise corporate trust powers, (b) is subject to supervision or examination by federal, state, territorial or District of Columbia authority, (c) shall have at all times a combined capital and surplus of not less than \$50,000,000 and (d) shall not be the Company or any person directly or indirectly controlling, controlled by or under common control with the Company. If such corporation publishes reports of condition at least annually, pursuant to law, or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation at any time shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, the Trustee shall resign immediately in the manner and with the effect specified in Section 7.10.

#### **SECTION 7.10. Resignation or Removal of Trustee.**

(a) The Trustee, or any trustee or trustees hereafter appointed, may at any time resign with respect to one or more or all series by giving written notice of resignation to the Company. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee with respect to the applicable series by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within 30 days after the mailing of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any of the following shall occur:

(1) the Trustee shall fail to comply with the provisions of Section 310(b) of the Trust Indenture Act, as specified in Section 7.08 with respect to any series of Securities after written request therefor by the Company or by any securityholder who has been a bona fide holder of a Security or Securities of such series for at least six months,

(2) the Trustee shall cease to be eligible in accordance with the provisions of Section 7.09 with respect to any series of Securities and shall fail to resign after written request therefor by the Company or by any such securityholder, or

(3) the Trustee shall become incapable of acting with respect to any series of Securities, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, then, in any such case, the Company may remove the Trustee with respect to the applicable series of Securities and appoint a successor trustee with respect to such series by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 6.14, any securityholder of such series who has been a bona fide holder of a Security or Securities of the applicable series for at least six months may, on behalf of himself or herself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee with respect to such series. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The holders of a majority in aggregate principal amount of the Securities of all series (voting as one class) at the time Outstanding may at any time remove the Trustee with respect to Securities of all series and appoint a successor trustee with respect to the Securities of all series.

(d) Any resignation or removal of the Trustee and any appointment of a successor trustee pursuant to any of the provisions of this Section shall become effective upon the appointment of a successor trustee and the acceptance of appointment by the successor trustee as provided in Section 7.11.

**SECTION 7.11. Acceptance by Successor Trustee.**

Any successor trustee appointed as provided in Section 7.10 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee with respect to all or any applicable series shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations with respect to such series of its predecessor hereunder, with like effect as if originally named as trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the predecessor trustee shall, upon payment of any amounts then due it pursuant to the provisions of Section 7.06, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the predecessor trustee. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing in order more fully and certainly to vest in and confirm to such successor trustee all such rights and powers. Any trustee, including the initial Trustee, ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such trustee to secure any amounts then due it pursuant to the provisions of Section 7.06.

In case of the appointment hereunder of a successor trustee with respect to the Securities of one or more (but not all) series, the Company, the predecessor Trustee and each successor trustee with respect to the Securities of any applicable series shall execute and deliver a supplemental indenture which shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the predecessor Trustee with respect to the Securities of any series as to which the predecessor Trustee is not retiring shall continue to be vested in the predecessor Trustee, and shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such trustees co-trustees of the same trust and that each such trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such trustee.

No successor trustee shall accept appointment as provided in this Section unless at the time of such acceptance such successor trustee shall be qualified and eligible under the provisions of this Article 7.

Upon acceptance of appointment by a successor trustee as provided in this Section, the Company shall mail notice of the succession of such trustee hereunder to all holders of Securities of any applicable series as the names and addresses of such holders shall appear on the registry books. If the Company fails to mail such notice in the prescribed manner within 10 days after the acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be so mailed at the expense of the Company.

**SECTION 7.12. Successor by Merger, etc.**

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder; provided such corporation shall be qualified and eligible under the provisions of this Article 7, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

**SECTION 7.13. Limitations on Rights of Trustee as Creditor.**

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

**SECTION 7.14. Notice of Default.**

Within 90 days after the occurrence of any default on a series of Securities hereunder, the Trustee shall transmit to all securityholders of that series, in the manner and to the extent provided in Section 15.04, notice of such default hereunder known to the Trustee, unless such default shall have been cured or waived; provided, that except in the case of a default in the payment of the principal of or interest on any Security or on the payment of any sinking or purchase fund installment, the Trustee shall be protected in withholding such notice if and so long as the Trustee in good faith determines that the withholding of such notice is in the interests of the securityholders; and provided, further, that in the case of any default of the character specified in clause (c) of Section 6.01 no such notice to securityholders shall be given until at least 30 days after the occurrence thereof. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to Securities of such series.

## **SECTION 7.15. Appointment of Authenticating Agent.**

The Trustee may appoint an authenticating agent or agents (which may be an affiliate or affiliates of the Company) 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 or upon exchange, registration of transfer or partial redemption thereof or pursuant to Section 2.09, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an authenticating agent and a certificate of authentication executed on behalf of the Trustee by an authenticating agent. Each authenticating agent shall be acceptable to the Company and shall at all times be a corporation organized and doing business under the laws of the United States of America or of any State or Territory thereof or of the District of Columbia, which (a) is authorized under such laws to exercise corporate trust powers or to otherwise act as authenticating agent, (b) is subject to supervision or examination by federal, state, territorial or District of Columbia authority, and (c) shall have at all times a combined capital and surplus of not less than \$50,000,000. If such authenticating agent publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such authenticating agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an authenticating agent shall cease to be eligible in accordance with the provisions of this Section, such authenticating agent shall resign immediately in the manner and with the effect specified in this Section.

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

An authenticating agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an authenticating agent by giving written notice thereof to such authenticating agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such authenticating agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee may appoint a successor authenticating agent which shall be acceptable to the Company and shall promptly give notice of such appointment to all holders of Securities in the manner and to the extent provided in Section 15.04. Any successor authenticating agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an authenticating agent. No successor authenticating agent shall be appointed unless eligible under the provisions of this Section.

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

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

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

[ ],

as Trustee

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

If all of the Securities of a series may not be originally issued at one time, and the Trustee does not have an office capable of authenticating Securities upon original issuance located in a Place of Payment where the Company wishes to have Securities of such series authenticated upon original issuance, the Trustee, if so requested by the Company in writing, shall appoint in accordance with this Section an authenticating agent (which, if so requested by the Company, shall be such affiliate of the Company) having an office in a Place of Payment designated by the Company with respect to such series of Securities, provided that the terms and conditions of such appointment are acceptable to the Trustee.

## ARTICLE 8 CONCERNING THE SECURITYHOLDERS

### SECTION 8.01. Action by Securityholders.

Whenever in this Indenture it is provided that the holders of a specified percentage in aggregate principal amount of the Securities of any or all series may take any action (including the making of any demand or request, the giving of any authorization, notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action the holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by securityholders in person or by agent or proxy appointed in writing, (b) if Securities of a series are issuable as Bearer Securities, by the record of the holders of Securities voting in favor thereof, either in person or by proxies duly appointed in writing, at any meeting of securityholders of such series duly called and held in accordance with the provisions of Article 9, or (c) by a combination of such instrument or instruments and any such record of such a meeting of securityholders.

In determining whether the holders of a specified percentage in aggregate principal amount of the Securities of any or all series have taken any action (including the making of any demand or request, the giving of any authorization, direction, notice, consent or waiver or the taking of any other action), (i) the principal amount of any Original Issue Discount Security that may be counted in making such determination and that shall be deemed to be outstanding for such purposes shall be equal to the amount of the principal thereof that could be declared to be due and payable upon an Event of Default pursuant to the terms of such Original Issue Discount Security at the time the taking of such of such action is evidenced to the Trustee, and (ii) the principal amount of a Security denominated in a foreign currency or currency unit shall be the U.S. dollar equivalent, determined as of the date of original issuance of such Security in accordance with Section 2.03(b) hereof, of the principal amount of such Security.

### **SECTION 8.02. Proof of Execution by Securityholders.**

Subject to the provisions of Section 7.01, Section 7.02 and Section 9.05, proof of the execution of any instrument by a securityholder or its agent or proxy, or of the holding by any person of a Security, shall be sufficient and conclusive in favor of the Trustee and the Company if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee.

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

The record of any securityholders' meeting shall be proved in the manner provided in Section 9.06.

### **SECTION 8.03. Who Are Deemed Absolute Owners.**

Prior to due presentment of a Registered Security for registration of transfer, the Company, the Trustee and any agent of the Company or of the Trustee may deem the person in whose name such Registered Security shall be registered upon the Security Register to be, and may treat him as, the absolute owner of such Registered Security (whether or not such Security shall be overdue and notwithstanding any notation of ownership or other writing thereon), for the purpose of receiving payment of or on account of the principal of (and premium, if any) and, subject to the provisions of Section 2.05, any interest on such Security and for all other purposes; and neither the Company nor the Trustee nor any agent of the Company or of the Trustee shall be affected by any notice to the contrary. All such payments so made to any holder for the time being, or upon his or her order, shall be valid and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for moneys payable upon any such Security.

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

Notwithstanding the foregoing, with respect to any temporary or permanent global Security, nothing herein shall prevent the Company, the Trustee, or any agent of the Company or of the Trustee, from giving effect to any written certification, proxy or other authorization furnished by a U.S. Depository, or impair, as between a U.S. Depository and holders of beneficial interests in any temporary or permanent global Security, as the case may be, the operation of customary practices governing the exercise of the rights of the U.S. Depository as holder of such temporary or permanent global Security.

#### **SECTION 8.04. Company-Owned Securities Disregarded.**

In determining whether the holders of the required aggregate principal amount of Securities have provided any request, demand, authorization, notice, direction, consent or waiver under this Indenture, Securities which are owned by the Company or any other obligor on the Securities, or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any other obligor on the Securities, shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, except that for the purpose of determining whether the Trustee shall be protected in relying on any such request, demand, authorization, direction, notice, consent or waiver, only Securities which the Trustee knows are so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding for the purposes of this Section if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Securities and that the pledgee is not a person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any such other obligor. In the case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall provide full protection to the Trustee.

#### **SECTION 8.05. Revocation of Consents; Future Securityholders Bound.**

At any time prior to the taking of any action by the holders of the percentage in aggregate principal amount of the Securities specified in this Indenture in connection with such action, any holder of a Security, the identifying number of which is shown by the evidence to be included in the Securities the holders of which have consented to such action, may, by filing written notice with the Trustee at its office and upon proof of holding as provided in Section 8.02, revoke such action so far as concerns such Security. Except as aforesaid any such action taken by the holder of any Security shall be conclusive and binding upon such holder and upon all future holders and owners of such Security and of any Security issued upon registration of transfer of or in exchange or substitution therefor in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, irrespective of whether or not any notation in regard thereto is made upon such Security. Any action taken by the holders of the percentage in aggregate principal amount of the Securities specified in this Indenture in connection with such action shall be conclusively binding upon the Company, the Trustee and the holders of all the Securities.



#### **SECTION 8.06. Record Date.**

The Company may, but shall not be obligated to, set a record date for purposes of determining the identity of holders of Securities of any series entitled to vote or consent to any action by vote or consent or to otherwise take any action under this Indenture authorized or permitted by Section 6.12 and Section 6.13 or otherwise under this Indenture. Such record date shall be the later of (i) the date 20 days prior to the first solicitation of such consent or vote or other action and (ii) the date of the most recent list of holders of such Securities delivered to the Corporate Trust Office of the Trustee pursuant to Section 5.01 prior to such solicitation. If such a record date is fixed, those persons who were holders of such Securities at the close of business on such record date shall be entitled to vote or consent or take such other action, or to revoke any such action, whether or not such persons continue to be holders after such record date, and for that purpose the Outstanding Securities shall be computed as of such record date.

### **ARTICLE 9 SECURITYHOLDERS' MEETINGS**

#### **SECTION 9.01. Purposes of Meeting.**

A meeting of holders of any or all series of Securities may be called at any time and from time to time pursuant to the provisions of this Article for any of the following purposes:

(a) to give any notice to the Company or to the Trustee, or to give any directions to the Trustee, or to waive any default hereunder and its consequences, or to take any other action authorized to be taken by securityholders pursuant to any of the provisions of Article 6;

(b) to remove the Trustee and appoint a successor trustee pursuant to the provisions of Article 7;

(c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 10.02; or

(d) to take any other action authorized to be taken by or on behalf of the holders of any specified aggregate principal amount of the Securities of any or all series, as the case may be, under any other provision of this Indenture or under applicable law.

#### **SECTION 9.02. Call of Meetings by Trustee.**

The Trustee may at any time call a meeting of securityholders of any or all series to take any action specified in Section 9.01, to be held at such time and at such place in New York, New York or Leawood, Kansas as the Trustee shall determine. Notice of every meeting of the securityholders of any or all series, setting forth the time and place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given in the manner provided in Section 15.04 not less than 20 nor more than 180 days prior to the date fixed for the meeting.

### **SECTION 9.03. Call of Meetings by Company or Securityholders.**

In case at any time the Company, pursuant to a Board Resolution, or the holders of at least 10% in aggregate principal amount of the Securities of any or all series, as the case may be, then Outstanding, shall have requested the Trustee to call a meeting of securityholders of any or all series to take any action authorized in Section 9.01, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have provided notice of such meeting in the manner provided in Section 15.04 within 30 days after receipt of such request, then the Company or the holders of such Securities in the amount above specified may determine the time and the place in New York, New York or Leawood, Kansas for such meeting and may call such meeting by giving notice thereof as provided in Section 9.02.

### **SECTION 9.04. Qualifications for Voting.**

To be entitled to vote at any meeting of securityholders a person shall be a holder of one or more Securities of such series Outstanding with respect to which a meeting is being held or a person appointed by an instrument in writing as proxy by such a holder or holders. The only persons who shall be entitled to be present or to speak at any meeting of the securityholders of any series shall be the persons entitled to vote at such meeting and their counsel, any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

### **SECTION 9.05. Regulations.**

Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of securityholders of a series, in regard to proof of the holding of Securities and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it deems fit. Except as otherwise permitted or required by any such regulations, the holding of Securities shall be proved in the manner specified in Article 8 and the appointment of any proxy shall be proved in the manner specified in Article 8 or by having the signature of the person executing the proxy witnessed or guaranteed by any trust company, bank or banker authorized by Article 8 to certify to the holding of Bearer Securities. Such regulations may provide that written instruments appointing proxies, regular on their face, may be presumed valid and genuine without the proof specified in Article 8 or other proof.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by securityholders as provided in Section 9.03, in which case the Company or the securityholders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the holders of a majority in principal amount of the Securities represented at the meeting and entitled to vote.

Subject to the provisions of Section 8.01 and Section 8.04, at any meeting each securityholder or proxy shall be entitled to one vote for each \$1,000 (or the U.S. Dollar equivalent thereof in connection with Securities issued in a foreign currency or currency unit) Outstanding principal amount of Securities of such series held or represented by him or her; provided, however, that no vote shall be cast or counted at any meeting in respect of any Security challenged as not Outstanding and ruled by the chairman of the meeting to be not Outstanding. The chairman of the meeting shall have no right to vote except as a securityholder or proxy. Any meeting of securityholders duly called pursuant to the provisions of Section 9.02 or Section 9.03 may be adjourned from time to time, and the meeting may be reconvened without further notice.

## **SECTION 9.06. Voting.**

The vote upon any resolution submitted to any meeting of securityholders shall be by written ballot on which shall be subscribed the signatures of the securityholders or proxies and on which shall be inscribed the identifying number or numbers or to which shall be attached a list of identifying numbers of the Securities held or represented by them. The chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of securityholders shall be prepared by the secretary of the meeting and there shall be attached to the record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that the notice was mailed as provided in Section 9.02. The record shall show the aggregate principal amount of the Securities voting in favor of or against any resolution. The record shall be signed and verified by the chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

## **ARTICLE 10 SUPPLEMENTAL INDENTURES**

### **SECTION 10.01. Supplemental Indentures without Consent of Securityholders.**

Without the consent of any holders of Securities or coupons, the Company, when authorized by or pursuant to Board Resolution, and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act as in force at the date of the execution thereof) for one or more of the following purposes:

(a) to evidence the succession of another corporation to the Company, or successive successions, pursuant to Article 11 hereof, and the assumption by the successor corporation of the covenants, agreements and obligations of the Company herein and in the Securities;

(b) to add to the covenants of the Company such further covenants, restrictions, conditions or provisions as its Board of Directors shall consider to be for the protection of the holders of Securities, and to make the occurrence, or the occurrence and continuance, of a default in any of such additional covenants, restrictions, conditions or provisions an Event of Default permitting the enforcement of all or any of the several remedies provided in this Indenture as herein set forth, with such period of grace, if any, and subject to such conditions as such supplemental indenture may provide;

(c) to add any additional Events of Default;

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

(e) to modify, eliminate or add to the provisions of this Indenture to such extent as shall be necessary to effect the qualification of this Indenture under the Trust Indenture Act, or under any similar federal statute hereafter enacted, and to add to this Indenture such other provisions as may be expressly permitted by the Trust Indenture Act, excluding however, the provisions referred to in Section 316(a)(2) of the Trust Indenture Act or any corresponding provision in any similar federal statute hereafter enacted;

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

(g) to cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental indenture which may be defective or inconsistent with any other provisions contained herein or in any supplemental indenture; to convey, transfer, assign, mortgage or pledge any property to or with the Trustee; or to make such other provisions in regard to matters or questions arising under this Indenture, provided such other provisions shall not adversely affect in any material respect the interests of the holders of the Securities or any related coupons, including provisions necessary or desirable to provide for or facilitate the administration of the trusts hereunder;

(h) to secure any series of Security;

(i) to establish any series of Securities and the form or terms of securities of any series as permitted by Section 2.01 and Section 2.03;

(j) to evidence and provide for the acceptance and appointment hereunder by a successor trustee with respect to the Securities of one or more series and to add or change any provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one trustee, pursuant to Section 7.11; or

(k) to add to, change or eliminate any of the provisions of Article 16 or change the definition of Senior Indebtedness in respect of one or more series of Securities, including Outstanding Securities; *provided, however*, that no provision in any supplemental indenture that affects the superior position of holders of Senior Indebtedness shall be effective against holders of Senior Indebtedness.

The Trustee is hereby authorized to join with the Company in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations which may be therein contained and to accept the conveyance, transfer, assignment, mortgage or pledge of any property thereunder, but the Trustee shall not be obligated to enter into any such supplemental indenture which adversely affects the Trustee's own rights, duties or immunities under the Securities or this Indenture or will otherwise adversely affect it. No supplemental indenture shall be effective as against the Trustee unless and until the Trustee has duly executed and delivered the same.

## **SECTION 10.02. Supplemental Indentures with Consent of Holders.**

With the consent (evidenced as provided in Section 8.01) of the holders of not less than a majority in aggregate principal amount of the Securities of all series at the time Outstanding affected by such supplemental indenture (voting as one class), the Company, when authorized by a Board Resolution, and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act as in force at the date of the execution thereof) for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental indenture or of modifying in any manner the rights of the holders of the Securities of such series and any related coupons under this Indenture; provided, that no such supplemental indenture shall (1) extend the fixed maturity of any Securities, or reduce the principal amount thereof or premium, if any, or reduce the rate or extend the time of payment of interest thereon, without the consent of the holder of each Security so affected, (2) reduce the aforesaid percentage of Securities, the consent of the holders of which is required for any such supplemental indenture, without the consent of the holders of all Securities then Outstanding, (3) modify the subordination provisions in a manner adverse to the holders of such Securities, or (4) modify any of the above provisions.

Upon the request of the Company, accompanied by a copy of a Board Resolution certified by the Secretary or an Assistant Secretary of the Company authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of securityholders as aforesaid, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

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

Promptly after the execution by the Company and the Trustee of any supplemental indenture pursuant to the provisions of this Article 10, the Company shall provide notice, in the manner and to the extent provided in Section 15.04, setting forth in general terms the substance of such supplemental indenture, to all holders of Securities of each series so affected. Any failure of the Company so to provide such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture.

### **SECTION 10.03. Compliance with Trust Indenture Act; Effect of Supplemental Indentures.**

Any supplemental indenture executed pursuant to the provisions of this Article 10 shall comply with the Trust Indenture Act, as then in effect. Upon the execution of any supplemental indenture pursuant to the provisions of this Article 10 and subject to the provisions in any supplemental indenture relating to the prospective application of such instrument, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the holders of Securities theretofore or thereafter authenticated and delivered hereunder and of any coupons appertaining thereto shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

The Trustee, subject to the provisions of Section 7.01 and Section 7.02, shall be entitled to receive and shall be fully protected in relying upon an Officer's Certificate or an Opinion of Counsel as conclusive evidence that any such supplemental indenture complies with the provisions of this Article 10.

### **SECTION 10.04. Notation on Securities.**

Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article 10 may bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. New Securities of any series so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any modification of this Indenture contained in any such supplemental indenture may be prepared by the Company, authenticated by the Trustee and delivered, without charge to the securityholders, in exchange for the Securities of such series then Outstanding.

## **ARTICLE 11 CONSOLIDATION, MERGER, SALE OR CONVEYANCE**

### **SECTION 11.01. Company May Consolidate, etc., on Certain Terms.**

The Company covenants that it will not merge into or consolidate with any other corporation or sell or convey all or substantially all of its assets to any person, firm or corporation, unless (1) either the Company shall be the continuing corporation, or the successor corporation (if other than the Company) shall be a corporation organized and existing under the laws of the United States of America or a state thereof or the District of Columbia and such corporation shall expressly assume the due and punctual payment of the principal of (and premium, if any, on) and any interest on all the Securities, according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of this Indenture to be performed by the Company by supplemental indenture, executed and delivered to the Trustee by such corporation, and (2) the Company or such successor corporation, as the case may be, shall not, immediately after such merger or consolidation, or such sale or conveyance, be in default in the performance of any such covenant or condition.

**SECTION 11.02. Successor Corporation Substituted.**

In case of any such consolidation, merger, sale or conveyance and upon any such assumption by the successor corporation, such successor corporation shall succeed to and be substituted for, and may exercise every right and power of, the Company, with the same effect as if it had been named herein as the party of the first part. Such successor corporation thereupon may cause to be signed, and may issue either in its own name or in the name of the Company, any or all of the Securities issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such successor corporation, instead of the Company, and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall make available for delivery any Securities which previously shall have been signed and delivered by the officers of the Company to the Trustee for authentication, and any Securities which such successor corporation thereafter shall cause to be signed and delivered to the Trustee for that purpose. All of the Securities so issued shall in all respects have the same legal rank and benefit under this Indenture as the Securities theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Securities had been issued at the date of the execution thereof.

In case of any such consolidation, merger, sale or conveyance such changes in phrasing and form (but not in substance) may be made in the Securities thereafter to be issued as may be appropriate.

**SECTION 11.03. Opinion of Counsel and Officer's Certificate to Trustee.**

The Trustee shall receive an Opinion of Counsel and Officer's Certificate as conclusive evidence that any such consolidation, merger, sale or conveyance, and any such assumption, complies with the provisions of this Article 11 and that all conditions precedent herein provided for relating to such transaction have been complied with.

**ARTICLE 12**

**SATISFACTION AND DISCHARGE OF INDENTURE; UNCLAIMED MONEYS**

**SECTION 12.01. Discharge of Indenture.**

If at any time:

(a) the Company shall have delivered to the Trustee for cancellation all Securities of any series theretofore authenticated and all coupons, if any, appertaining thereto (other than (i) coupons appertaining to Bearer Securities surrendered for exchange for Registered Securities and maturing after such exchange, whose surrender is not required or has been waived as provided in Section 2.07, (ii) Securities and coupons that have been destroyed, lost or stolen and that have been replaced or paid as provided in Section 2.09, (iii) coupons appertaining to Securities called for redemption and maturing after the relevant redemption date, whose surrender has been waived as provided in Section 3.03, and (iv) Securities and coupons for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 4.03), or

(b) all such Securities of such series and, in the case of (a)(i) or (a)(ii) above, any coupons appertaining thereto not theretofore delivered to the Trustee for cancellation (i) shall have become due and payable, (ii) are by their terms to become due and payable within one year, or (iii) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption, and the Company in the case of (a)(i) or (a)(iii) above shall deposit or cause to be deposited with the Trustee as trust funds the entire amount (other than moneys repaid by the Trustee or any paying agent to the Company in accordance with Section 12.04) sufficient to pay at maturity or upon redemption all Securities of such series and coupons not therefore delivered to the Trustee for cancellation, including principal (and premium, if any) and any interest due or to become due to such date of maturity or date fixed for redemption, as the case may be, and if in either case the Company shall also pay or cause to be paid all other sums payable hereunder by the Company with respect to such series, then this Indenture shall cease to be of further effect with respect to the Securities of such series, and the Trustee, on demand of and at the cost and expense of the Company and subject to Section 15.05, shall execute such instruments reasonably requested by the Company acknowledging satisfaction of and discharging this Indenture with respect to the Securities of such series. The Company agrees to reimburse the Trustee for any costs or expenses thereafter reasonably incurred by the Trustee in connection with this Indenture or the Securities of such series. Notwithstanding the satisfaction and discharge of this Indenture with respect to the Securities of any series or of all series, the obligations of the Company to the Trustee under Section 7.06 shall survive.

The Company will deliver to the Trustee an Officer's Certificate and an Opinion of Counsel which together shall state that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

#### **SECTION 12.02. Deposited Moneys to be Held in Trust by Trustee.**

Subject to the provisions of Section 12.03 and 12.04, all moneys deposited with the Trustee pursuant to Section 12.01 shall be held in trust and applied by it to the payment, either directly or through any paying agent (including the Company acting as its own paying agent), to the persons entitled thereto, of all sums due and to become due thereon for principal and interest (and premium, if any) for which payment of such money has been deposited with the Trustee.

#### **SECTION 12.03. Paying Agent to Repay Moneys Held.**

In connection with the satisfaction and discharge of this Indenture with respect to Securities of any series and the payment of all amounts due to the Trustee under Section 7.06, all moneys with respect to such Securities then held by any paying agent under the provisions of this Indenture shall, upon demand of the Company, be repaid to it or paid to the Trustee and thereupon such paying agent shall be released from all further liability with respect to such moneys.

#### **SECTION 12.04. Return of Unclaimed Moneys.**

Any moneys deposited with or paid to the Trustee or any paying agent for the payment of the principal of (and premium, if any) or interest on any Security and not applied but remaining unclaimed for two years after the date upon which such principal (and premium, if any, on) or interest shall have become due and payable, shall be repaid to the Company by the Trustee or such paying agent on demand, and the holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for any payment which such holder may be entitled to collect and all liability of the Trustee or any paying agent with respect to such moneys shall thereupon cease.



**ARTICLE 13**  
**IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS**

**SECTION 13.01. Indenture and Securities Solely Corporate Obligations.**

No recourse under or upon any obligation, covenant or agreement contained in this Indenture, or in any Security or coupon, or because of any indebtedness evidenced thereby, shall be had against any incorporator, or against any past, present or future stockholder, officer or director, as such, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, under any rule of law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise, all such liability being expressly waived and released by the acceptance of the Securities or coupons by the holders thereof and as part of the consideration for the issue of the Securities.

**ARTICLE 14**  
**DEFEASANCE AND COVENANT DEFEASANCE**

**SECTION 14.01. Applicability of Article.**

Unless, as specified pursuant to Section 2.03(b), provision is made that either or both of (a) defeasance of the Securities of a series under Section 14.02 and (b) covenant defeasance of the Securities of a series under Section 14.03 shall not apply to the Securities of a series, then the provisions of such Section 14.02 and Section 14.03, together with Section 14.04 and Section 14.05, shall be applicable to the Outstanding Securities of all series upon compliance with the conditions set forth below in this Article 14.

**SECTION 14.02. Defeasance and Discharge.**

Subject to Section 14.05, the Company may cause itself to be discharged from its obligations with respect to the Outstanding Securities of any series on and after the date the conditions precedent set forth below are satisfied but subject to satisfaction of the conditions subsequent set forth below (hereinafter, "defeasance"). For this purpose, such defeasance means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by the Outstanding Securities of such series and to have satisfied all its other obligations under such Securities and this Indenture insofar as such Securities are concerned (and the Trustee, at the expense of the Company, shall execute such instruments reasonably requested by the Company acknowledging the same), except for the following which shall survive until otherwise terminated or discharged hereunder: (a) the rights of holders of Outstanding Securities of such series to receive, solely from the trust fund described in Section 14.04 and as more fully set forth in such Section, payments of the principal of and any premium and interest on such Securities when such payments are due, (b) the Company's obligations with respect to such Securities under Section 2.07, Section 2.08, Section 2.09, Section 4.02 and Section 4.03 and such obligations as shall be ancillary thereto, (c) the rights, powers, trusts, duties, immunities and other provisions in respect of the Trustee hereunder, and (d) this Article 14. Subject to compliance with this Article 14, defeasance with respect to Securities of a series by the Company is permitted under this Section 14.02 notwithstanding the prior exercise of its rights under Section 14.03 with respect to the Securities of such series. Following a defeasance, payment of the Securities of such series may not be accelerated because of an Event of Default.

#### **SECTION 14.03. Covenant Defeasance.**

The Company may cause itself to be released from its obligations under any Sections applicable to Securities of a series that are determined pursuant to Section 2.03(b) to be subject to this provision with respect to the Outstanding Securities of such series on and after the date the conditions precedent set forth below are satisfied but subject to satisfaction of the conditions subsequent set forth below (hereinafter, "covenant defeasance"). For this purpose, such covenant defeasance means that, with respect to the Outstanding Securities of such series, the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such Section, whether directly or indirectly by reason of any reference elsewhere herein to any such Section or by reason of any reference in any such Section to any other provision herein or in any other document, but the remainder of this Indenture and such Securities shall be unaffected thereby.

#### **SECTION 14.04. Conditions to Defeasance or Covenant Defeasance.**

The following shall be the conditions precedent or, as specifically noted below, subsequent to application of either Section 14.02 or Section 14.03 to the Outstanding Securities of such series:

(a) The Company shall irrevocably have deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the holders of such Securities, (i) money in an amount, (ii) U.S. Government Obligations which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment, money in an amount, or (iii) a combination thereof, sufficient, without reinvestment, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, and which shall be applied by the Trustee to pay and discharge, (1) the principal of and any premium and interest on the Outstanding Securities of such series to maturity or redemption, as the case may be, and (2) any mandatory sinking fund payments or analogous payments applicable to the Outstanding Securities of such series on the due dates thereof. Before such a deposit the Company may make arrangements satisfactory to the Trustee for the redemption of Securities at a future date or dates in accordance with Article 3 which shall be given effect in applying the foregoing. For this purpose, "U.S. Government Obligations" means securities that are (x) direct obligations of the United States of America for the payment of which its full faith and credit is pledged or (y) obligations of a person controlled or supervised by and acting as an agency or instrumentality of the United States of America the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any such U.S. Government Obligation or a specific payment of principal of or interest on any such U.S. Government Obligation held by such custodian for the account of the holder of such depository receipt, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government Obligation or the specific payment of principal of or interest on the U.S. Government Obligation evidenced by such depository receipt;

(b) No Default, or event that after notice or lapse of time, or both, would become a Default with respect to the Securities of such series, shall have happened and be continuing (i) on the date of such deposit or (ii) insofar as Section 6.01(d) and Section 6.01(e) are concerned, at any time during the period ending on the 123rd day after the date of such deposit or, if longer, ending on the day following the expiration of the longest preference period applicable to the Company in respect of such deposit (it being understood that the condition in this clause (b) is a condition subsequent and shall not be deemed satisfied until the expiration of such period);

(c) Such defeasance or covenant defeasance shall not (i) cause the Trustee for the Securities of such series to have a “conflicting interest” as defined in Section 310(b) of the Trust Indenture Act or (ii) result in the trust arising from such deposit to constitute, unless it is qualified as, a regulated investment company under the Investment Company Act of 1940, as amended;

(d) Such defeasance or covenant defeasance shall not result in a breach or violation of, or constitute a default under, this Indenture or any other agreement or instrument to which the Company is a party or by which it is bound;

(e) Such defeasance or covenant defeasance shall not cause any Securities of such series then listed on any registered national securities exchange under the Exchange Act to be delisted;

(f) In the case of a defeasance under Section 14.02, the Company shall have delivered to the Trustee an Opinion of Counsel stating that (x) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (y) since the date of this Indenture there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such opinion shall confirm that, the holders of the Outstanding Securities of such series will not recognize income, gain or loss for federal income tax purposes as a result of such defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such defeasance had not occurred;

(g) In the case of covenant defeasance under Section 14.03, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the holders of the Outstanding Securities of such series will not recognize income, gain or loss for federal income tax purposes as a result of such covenant defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred;

(h) Such defeasance or covenant defeasance shall be effected in compliance with any additional terms, conditions or limitations which may be imposed on the Company in connection therewith pursuant to Section 2.03(b); and

(i) The Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent and subsequent provided for in this Indenture relating to either the defeasance under Section 14.02 or the covenant defeasance under Section 14.03, as the case may be, have been complied with.

**SECTION 14.05. Deposited Money and U.S. Government Obligations to be Held in Trust; Other Miscellaneous Provisions.**

All money and U.S. Government Obligations (including the proceeds thereof) deposited with the Trustee pursuant to Section 14.04 in respect of the Outstanding Securities of such series shall be held in trust and applied by the Trustee, in accordance with the provisions of such Securities and this Indenture, to the payment, either directly or through any paying agent (but not including the Company acting as its own paying agent) as the Trustee may determine, to the holders of such Securities of all sums due and to become due thereon in respect of principal and any premium and interest, but such money need not be segregated from other funds except to the extent required by law.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the money or U.S. Government Obligations deposited pursuant to Section 14.04 or the principal and interest received in respect thereof.

Anything herein to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon Company Request any money or U.S. Government Obligations held by it as provided in Section 14.04 which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect an equivalent defeasance or covenant defeasance, provided that the Trustee shall not be required to liquidate any U.S. Government Obligations in order to comply with the provisions of this paragraph.

Anything herein to the contrary notwithstanding, if and to the extent the deposited money or U.S. Government Obligations (or the proceeds thereof) either (i) cannot be applied by the Trustee in accordance with this Section because of a court order or by operation of Article 16 or (ii) are for any reason insufficient in amount, then the Company's obligations to pay principal of and any premium and interest on the Securities of such series shall be reinstated to the extent necessary to cover the deficiency on any due date for payment. In any such case, the Company's interest in the deposited money and U.S. Government Obligations (and proceeds thereof) shall be reinstated to the extent the Company's payment obligations are reinstated.

**ARTICLE 15  
MISCELLANEOUS PROVISIONS**

**SECTION 15.01. Benefits of Indenture Restricted to Parties and Securityholders.**

Nothing in this Indenture or in the Securities, expressed or implied, shall give or be construed to give to any person, firm or corporation, other than the parties hereto and their successors and assigns and the holders of the Securities (and, with respect to the provisions of Article 16, the holders of Senior Indebtedness), any legal or equitable right, remedy or claim under this Indenture or under any covenant or provision herein contained, all such covenants and provisions being for the sole benefit of the parties hereto and their successors and assigns and the holders of the Securities (and, with respect to the provisions of Article 16, the holders of Senior Indebtedness).

**SECTION 15.02. Provisions Binding on Company's Successors.**

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

**SECTION 15.03. Addresses for Notices, etc., to Company and Trustee.**

Any notice or demand which by any provisions of this Indenture is required or permitted to be given or served by the Trustee or by the holders of Securities to or on the Company may be given or served by postage prepaid first class mail addressed (until another address is filed by the Company with the Trustee), as follows: CrossFirst Bankshares, Inc., 11440 Tomahawk Creek Parkway, Leawood, Kansas 66211, Attn: Chief Financial Officer. Any notice, direction, request or demand by any securityholder to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if given or made in writing at the Corporate Trust Office of the Trustee as set forth in Section 4.02.

**SECTION 15.04. Notice to Holders of Securities; Waiver.**

Except as otherwise expressly provided herein, where this Indenture provides for notice of holders of Securities of any event,

(a) such notice shall be sufficiently given to holders of Registered Securities if in writing and mailed, first-class postage prepaid, to each holder of a Registered Security affected by such event, at the address of such holder as it appears in the Security Register, not earlier than the earliest date, and not later than the latest date, prescribed for the giving of such notice; and

(b) such notice shall be sufficiently given to holders of Bearer Securities if published in an Authorized Newspaper in the Borough of Manhattan, the City of New York and in such other city or cities as may be specified in such Securities on a Business Day at least twice, the first such publication to be not earlier than the earliest date, and not later than the latest date, prescribed for the giving of such notice.

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

In case by reason of the suspension of publication of any Authorized Newspaper or Authorized Newspapers or by reason of any other cause it shall be impracticable to publish any notice to holders of Bearer Securities as provided above, then such notification as shall be given with the approval of the Trustee shall constitute sufficient notice to such holders for every purpose hereunder. Neither the failure to give notice by publication to holders of Bearer Securities as provided above, nor any defect in any notice so published, shall affect the sufficiency of any notice to holders of Registered Securities given as provided herein.

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 of Securities shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

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

Notwithstanding anything in this Indenture to the contrary, where any notice is to be given to the holders of global Securities, notice shall be sufficient if given in accordance with the procedures of the U.S. Depository.

**SECTION 15.05. Evidence of Compliance with Conditions Precedent.**

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

Each Officer's Certificate and Opinion of Counsel provided for in this Indenture and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Indenture shall include (1) a statement that the person making such certificate or opinion has read such covenant or condition; (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (3) a statement that, in the opinion of such person, 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 (4) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

**SECTION 15.06. Legal Holidays.**

In any case where the date of maturity of interest on or principal of the Securities or the date fixed for redemption of any Securities shall be a Saturday or Sunday or a legal holiday in New York, New York or Leawood, Kansas or in such other place or places as the Company may designate pursuant to Section 4.02, or a day on which banking institutions in New York, New York or Leawood, Kansas or in such other place or places are authorized by law or required by executive order to close, then payment of interest or principal (and premium, if any) need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after such date.

**SECTION 15.07. Trust Indenture Act to Control.**

If and to the extent that any provision of this Indenture limits, qualifies or conflicts with another provision included in this Indenture which is required to be included in this Indenture by any of Sections 310 to 317, inclusive, of the Trust Indenture Act, such required provision shall control.

**SECTION 15.08. Execution in Counterparts.**

This Indenture may be executed in any number of counterparts, each of which shall be an original; but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission will constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to this Indenture or any document to be signed in connection with this Indenture shall be deemed to include electronic signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, and the parties hereto consent to conduct the transactions contemplated hereunder by electronic means. Signatures of the parties hereto transmitted by facsimile or PDF will be deemed to be their original signatures for all purposes.

**SECTION 15.09. Governing Law; Waiver of Jury Trial.**

This Indenture and each Security shall be deemed to be a contract made under the laws of the State of New York, and for all purposes shall be governed by and construed in accordance with the laws of the State of New York.

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 SECURITIES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**SECTION 15.10. Severability.**

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

The Trustee, by its execution of this Indenture, hereby accepts the trusts in this Indenture declared and provided, upon the terms and conditions hereinabove set forth.

**SECTION 15.11. Interpretations.**

The Table of Contents, Cross-Reference Table and Headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Company or its Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

**SECTION 15.12. U.S.A. Patriot Act.**

The parties hereto acknowledge that in accordance with Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "USA PATRIOT Act"), the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the USA PATRIOT Act.

**SECTION 15.13. 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.

**SECTION 15.14. Jurisdiction.**

The Company and the Trustee agree that any suit, action or proceeding arising out of or based upon this Indenture or the Securities may be instituted in any state or Federal court in the Borough of Manhattan, New York, New York, and any appellate court from any thereof, and irrevocably submit to the non-exclusive jurisdiction of such courts in any suit, action or proceeding. The Company and the Trustee irrevocably waive, to the fullest extent permitted by law, any objection to any suit, action, or proceeding that may be brought in connection with this Indenture or the Securities, including such actions, suits or proceedings relating to securities laws of the United States or any state thereof, in such courts whether on the grounds of venue, residence or domicile or on the ground that any such suit, action or proceeding has been brought in an inconvenient forum. The Company and the Trustee agree that final judgment in any such suit, action or proceeding brought in such court shall be conclusive and binding upon the Company or the Trustee, as applicable, and may be enforced in any court to the jurisdiction of which the Company or the Trustee, as applicable, is subject by a suit upon such judgment.



**ARTICLE 16**  
**SUBORDINATION OF SECURITIES**

**SECTION 16.01. Securities Subordinate to Senior Indebtedness.**

Except as otherwise provided in a supplemental indenture or pursuant to Section 2.03, the Company agrees, and each holder by accepting a Security agrees, that the indebtedness evidenced by the Securities is subordinated in right of payment, to the extent and in the manner provided in this Article, to the prior payment in full of all Senior Indebtedness and that the subordination is for the benefit of the holders of Senior Indebtedness. Notwithstanding the foregoing, if a deposit is made pursuant to Section 14.02 or Section 14.03 with respect to any Securities (and provided all other conditions set out in Section 14.02 or 14.03, as applicable, shall have been satisfied with respect to such Securities), then, when the 90th day after such deposit has ended, no money obligations so deposited, and no proceeds thereon, will be subject to any rights of holders of Senior Indebtedness, including any such rights arising under this Article 16. Notwithstanding anything in this Indenture to the contrary, the provisions of this Article 16 shall not apply to any amounts due to the Trustee under Section 7.06.

IN WITNESS WHEREOF, CROSSFIRST BANKSHARES, INC. has caused this Indenture to be signed and acknowledged by its Chief Executive Officer or its Chief Financial Officer, and [\_\_\_\_\_] has caused this Indenture to be signed and acknowledged by one of its Responsible Officers, all as of the day and year first above written.

CROSSFIRST BANKSHARES, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
[\_\_\_\_\_]

AS TRUSTEE

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

## [FORM OF CERTIFICATION]

**[FORM OF CERTIFICATE TO BE GIVEN BY PERSON ENTITLED TO RECEIVE (1) BEARER SECURITY, (2) SECURITY INITIALLY REPRESENTED BY A TEMPORARY GLOBAL SECURITY OR (3) INTEREST ON A TEMPORARY GLOBAL SECURITY] CERTIFICATE**

[Insert title or sufficient description of Securities]

This is to certify that the above-captioned Securities are being acquired by or on behalf of (or for offer to resell or for resale to), and if this certificate is being delivered in connection with a payment of interest, were beneficially owned by or on behalf of: (a) a person (other than a financial institution for purposes of resale during the restricted period) who is not a United States person; (b) a United States person (other than a financial institution for purposes of resale during the restricted period) who is (i) a foreign branch of a United States financial institution or (ii) a United States person acquiring such Securities through the foreign branch of a United States financial institution and who for purposes of this certification holds such Securities through such financial institution on the date hereof, and, in the case of either (i) or (ii), such United States financial institution has agreed, for the benefit of the Company, to comply with the requirements of Section 165(j)(3)(A), (b) or (c) of the Internal Revenue Code of 1986, as from time to time amended, and the regulations thereunder; or (c) a financial institution for purposes of resale during the restricted period and such financial institution has not acquired such Securities for purposes of resale directly or indirectly to a United States person or to a person within the United States or its Possessions. If the undersigned is a clearing organization, the undersigned has obtained a similar certificate from its member organizations on which this certificate is based; provided, that if the undersigned has actual knowledge that the information contained in such a certificate is false (and, absent documentary evidence that the beneficial owner of such Security is not a United States person, it will be deemed to have actual knowledge that such certificate is false if it has a United States address for such beneficial owner, other than a financial institution described above), the undersigned will not deliver a Security in temporary or definitive bearer form to the person who signed such certificate notwithstanding the delivery of such certificate to the undersigned.

As used herein, "United States person" means a citizen or resident of the United States, a corporation, partnership or other entity created or organized in or under the laws of the United States and an estate or trust the income of which is subject to United States federal income taxation regardless of its source, "United States" means the United States of America (including the States and the District of Columbia), "Possessions" of the United States include Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and Northern Mariana Islands, "restricted period" means the period described in Section 1.163-5(c)(2)(i)(D)(7) of the Treasury Regulations and "financial institution" means the persons described in Section 1.165-12(c)(1)(v) of the Treasury Regulations.

We undertake to advise you by [telex] if the above statement as to beneficial ownership is not correct on the date of delivery of the above-captioned Securities or on the interest payment date with respect to the above-captioned Securities, as the case may be, as to all of such Securities.

We understand that this certificate may be required in connection with certain tax legislation in the United States. If administrative or legal proceedings are commenced or threatened in connection with which this certificate is or would be relevant, we irrevocably authorize you to produce this certificate or a copy thereof to any interested party in such proceedings.

Dated: \_\_\_\_\_, 20\_\_

[To be dated on or after \_\_\_\_\_, 20\_\_ (the date determined as provided in the Indenture)]

[Name of Person Entitled to Receive Bearer Security or Interest]

\_\_\_\_\_  
(Authorized Signatory)

Name: \_\_\_\_\_

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

February 23, 2023

CrossFirst Bankshares, Inc.  
11440 Tomahawk Creek Parkway  
Leawood, KS 66211

Re: Registration Statement on Form S-3

Dear Ladies and Gentlemen:

We have acted as counsel to CrossFirst Bankshares, Inc., a Kansas corporation (the "Company"), in connection with the registration by the Company under the Securities Act of 1933, as amended (the "Securities Act"), of the offer and sale by the Company from time to time of up to \$250,000,000 of: (i) shares of the Company's common stock, \$0.01 par value per share (the "Common Stock"); (ii) shares of the Company's preferred stock, \$0.01 par value per share (the "Preferred Stock"); (iii) one or more series of senior debt securities of the Company (the "Senior Debt Securities"), to be issued pursuant to a senior debt indenture in substantially the form filed as Exhibit 4.2 to the Registration Statement (as defined below) (the "Senior Debt Indenture"); (iv) one or more series of subordinated debt securities of the Company (the "Subordinated Debt Securities," and, together with the Senior Debt Securities, the "Debt Securities"), to be issued pursuant to a subordinated debt indenture in substantially the form filed as Exhibit 4.3 to the Registration Statement (as defined below) (the "Subordinated Debt Indenture"); (v) depositary shares, representing an interest in fractional shares or multiple shares of Preferred Stock and evidenced by a depositary receipt (the "Depositary Shares"); (vi) warrants to purchase Debt Securities, Common Stock, Preferred Stock or any combination of these securities (the "Warrants"); (vii) purchase contracts that will entitle the holder thereof to purchase or sell Common Stock, Preferred Stock or Debt Securities at a specified purchase price or at a purchase price determined by reference to a specific formula at a future date (the "Purchase Contracts"); (viii) purchase units, consisting of Purchase Contracts and any combination of Common Stock, Preferred Stock or Covered Securities (as defined below) securing the holder's obligation to purchase the securities under the Purchase Contract (the "Purchase Units"); (ix) rights to subscribe to purchase Common Stock, Preferred Stock or Debt Securities (the "Subscription Rights"); and (x) units comprised of any combination of Common Stock, Preferred Stock, Debt Securities, Depositary Shares, Warrants, Purchase Contracts, Purchase Units or Subscription Rights (the "Units" and, collectively with the Debt Securities, Depositary Shares, Warrants, Purchase Contracts, Purchase Units and Subscription Rights, the "Covered Securities"), pursuant to the Company's registration statement on Form S-3 (the "Registration Statement") filed with the United States Securities and Exchange Commission (the "Commission") on the date hereof.

We have reviewed (i) the Registration Statement, including the form of prospectus included therein, (ii) the forms of Senior Debt Indenture and Subordinated Debt Indenture filed as Exhibits 4.2 and 4.3, respectively, to the Registration Statement, (iii) certain resolutions adopted by the Company's Board of Directors and (iv) such corporate records, certificates and other documents, and such questions of law, as we have considered necessary or appropriate for the purposes of this opinion. We have assumed that all signatures are genuine, that all documents submitted to us as originals are authentic and that all copies of documents submitted to us conform to the originals, and the truthfulness of all statements of fact contained therein.

1201 Walnut Street, Suite 2900, Kansas City, MO 64106

STINSON LLP  STINSON.COM

We have assumed that, at the time of the issuance, sale and delivery of each series of Debt Securities and each issue of Depositary Shares, Warrants, Purchase Contracts, Purchase Units, Subscription Rights or Units, as the case may be: (i) the execution, delivery and performance by the Company of the Senior Debt Indenture or the Subordinated Debt Indenture, as applicable, and any supplemental indenture thereto (any such indenture, together with any applicable supplemental indenture, the “Indenture”), and any deposit agreement, deposit receipt, warrant agreement, purchase contract agreement, purchase unit agreement, subscription agreement or subscription rights certificate, and unit agreement (collectively with any Indenture, the “Documents”), as applicable, and all actions necessary for the issuance of the applicable Covered Securities, and the form and terms thereof, will comply with all requirements and restrictions, if any, applicable to the Company, whether imposed by any agreement or instrument to which the Company is a party or by which it is bound or any court or other governmental or regulatory body having jurisdiction over the Company; (ii) the Company will have duly authorized, executed and delivered any such Document and will have duly authorized the issuance of any such Covered Security, and none of such authorizations will have been modified or rescinded, and there will not have occurred any change in law affecting the validity, legally binding character or enforceability thereof; and (iii) the prospectus included in the Registration Statement will describe the Covered Securities offered thereby or an appropriate prospectus supplement will have been prepared, delivered and filed with the Commission in compliance with the Securities Act and the applicable rules and regulations thereunder and will describe the Covered Securities offered thereby. We have also assumed that the Covered Securities will be offered and sold in compliance with applicable federal and state securities laws and in the manner stated in the Registration Statement and the appropriate prospectus supplement. We have assumed further that the Documents will be governed by and construed in accordance with the laws of the State of New York. We have further assumed that, at the time of the issuance, sale and delivery of any shares of Common Stock or Preferred Stock, or of any other Covered Securities which are exercisable or exchangeable for, or convertible into, Common Stock or Preferred Stock, the Company has a sufficient number of authorized but unissued shares of Common Stock or Preferred Stock, as the case may be, under its articles of incorporation. With respect to any Document executed or to be executed by any party other than the Company, we have assumed that such party has, or will have, duly authorized, executed and delivered the Documents to which it is a party and that each such Document is, or will be, the valid and binding obligation of such party, enforceable against it in accordance with its terms.

We have relied as to certain matters on information obtained from public officials, officers of the Company and other sources believed by us to be responsible.

Based upon the foregoing, and subject to the qualifications set forth herein, we are of the opinion that, when, as and if:

1. With respect to shares of Common Stock: (i) the Registration Statement and any required post-effective amendments thereto have all become effective under the Securities Act and all prospectus supplements required by applicable law have been delivered and filed as required by such laws; (ii) all necessary corporate action has been taken by the Company to authorize and approve for issuance any shares of Common Stock and to fix or to otherwise determine the consideration to be received for the shares of Common Stock, and the terms of the offer and sale thereof; (iii) any legally required consents, approvals, authorizations and other orders of the Commission and any other regulatory authorities have been obtained; and (iv) the shares of Common Stock have been duly issued and delivered against payment of the consideration therefor in accordance with such corporate action and applicable law and as contemplated in the Registration Statement and the prospectus supplement and any pricing supplement setting forth the terms of the Common Stock and the plan of distribution, then, upon the happening of such events, the shares of Common Stock will be validly issued, fully paid and non-assessable.

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2. With respect to shares of any series of Preferred Stock: (i) the Registration Statement and any required post-effective amendments thereto have all become effective under the Securities Act and all prospectus supplements required by applicable law have been delivered and filed as required by such laws; (ii) all necessary corporate action has been taken by the Company to establish the rights, preferences and privileges of, and limitations on, such series of Preferred Stock and to authorize and approve the issuance and sale of the shares of Preferred Stock of such series and fix or otherwise determine the consideration to be received for the shares of Preferred Stock, and the terms of the offer and sale thereof; (iii) any legally required consents, approvals, authorizations and other orders of the Commission and any other regulatory authorities have been obtained; (iv) an appropriate certificate of designations with respect to such series of Preferred Stock has been duly filed in accordance with applicable law; and (v) the shares of Preferred Stock with terms so fixed have been duly issued and delivered against payment of the consideration therefor in accordance with such corporate action and applicable law and as contemplated in the Registration Statement and the prospectus supplement and any pricing supplement setting forth the terms of the Preferred Stock and the plan of distribution, then, upon the happening of such events, the shares of such series of Preferred Stock will be validly issued, fully paid and non-assessable.

3. With respect to any series of Debt Securities: (i) the Registration Statement and any required post-effective amendments thereto have all become effective under the Securities Act and all prospectus supplements required by applicable law have been delivered and filed as required by such laws; (ii) all necessary corporate action has been taken by the Company to duly authorize, execute and deliver the Indenture and to authorize the form, terms, execution and delivery of the Debt Securities; (iii) any legally required consents, approvals, authorizations and other orders of the Commission and any other regulatory authorities have been obtained; (iv) the Indenture has been duly executed and delivered on behalf of the Company and a trustee qualified to act as such under applicable law (the “trustee”) and such Indenture has been duly qualified under the Trust Indenture Act of 1939, as amended; and (v) such Debt Securities have been duly executed by the Company and authenticated by the trustee in accordance with the Indenture, and have been duly issued and delivered against payment therefor in accordance with such corporate action and applicable law and as contemplated in the Registration Statement and the prospectus supplement setting forth the terms of the Debt Securities and the plan of distribution, then, upon the happening of such events, such Debt Securities (including any Debt Securities to be issued by the Company upon the conversion or exercise of other Covered Securities issued by the Company pursuant to the Registration Statement) will constitute the valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws of general applicability relating to or affecting creditors’ rights and to general equity principles.

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4. With respect to the Depositary Shares: (i) the Registration Statement and any required post-effective amendments thereto have all become effective under the Securities Act and all prospectus supplements required by applicable law have been delivered and filed as required by such laws; (ii) all necessary corporate action has been taken by the Company to authorize, execute and deliver a deposit agreement and deposit receipt and to authorize the form, terms, execution and delivery of any Depositary Shares and to fix or otherwise determine the consideration to be received for the Depositary Shares and the terms of the offer and sale thereof; (iii) any legally required consents, approvals, authorizations and other orders of the Commission and any other regulatory authorities have been obtained; (iv) any shares of Preferred Stock underlying the Depositary Shares have been duly and validly authorized and reserved for issuance and sale; (v) the deposit agreement with respect to the Depositary Shares has been duly executed and delivered by the Company and the deposit agent; and (vi) the depositary receipts evidencing the Depositary Shares have been duly executed and delivered by the depositary against payment therefor in accordance with the applicable deposit agreement, and in accordance with such corporate action and applicable law and as contemplated in the Registration Statement and the prospectus supplement setting forth the terms of the Depositary Shares and the plan of distribution, then, upon the happening of such events, the Depositary Shares will be legally issued and will entitle the holders thereof to the rights specified in the deposit agreement.

5. With respect to the Warrants: (i) the Registration Statement and any required post-effective amendments thereto have all become effective under the Securities Act and all prospectus supplements required by applicable law have been delivered and filed as required by such laws; (ii) all necessary corporate action has been taken by the Company to authorize, execute and deliver a warrant agreement and to authorize the form, terms, execution and delivery of any Warrants and to fix or otherwise determine the consideration to be received for the Warrants and the terms of the offer and sale thereof; (iii) any legally required consents, approvals, authorizations and other orders of the Commission and any other regulatory authorities have been obtained; (iv) any shares of Debt Securities, Common Stock, or Preferred Stock purchasable upon exercise of such Warrants, as applicable, have been duly and validly authorized and, in the case of shares of Common Stock or Preferred Stock, reserved for issuance and sale; (v) the warrant agreement with respect to the Warrants has been duly executed and delivered by the Company and the warrant agent; and (vi) the Warrants have been duly executed and delivered by the Company against payment therefor in accordance with any applicable warrant agreement, and in accordance with such corporate action and applicable law and as contemplated in the Registration Statement and the prospectus supplement setting forth the terms of the Warrants and the plan of distribution, then, upon the happening of such events, the Warrants will constitute the valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws of general applicability relating to or affecting creditors' rights and to general equity principles.

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6. With respect to the Purchase Contracts and Purchase Units: (i) the Registration Statement and any required post-effective amendments thereto have all become effective under the Securities Act and all prospectus supplements required by applicable law have been delivered and filed as required by such laws; (ii) all necessary corporate action has been taken by the Company to authorize, execute and deliver a purchase contract agreement and/or a purchase unit agreement, as applicable, and to authorize the form, terms, execution and delivery of the Purchase Contracts or Purchase Units, as applicable, and to fix or otherwise determine the consideration to be received for the Purchase Contracts or Purchase Units, as applicable, and the terms of the offer and sale thereof; (iii) any legally required consents, approvals, authorizations and other orders of the Commission and any other regulatory authorities have been obtained; (iv) any shares of Common Stock or Preferred Stock or any Debt Securities to be issued pursuant to such Purchase Contracts or Purchase Units as applicable, have been duly and validly authorized and, in the case of shares of Common Stock or Preferred Stock, reserved for issuance and sale; (v) any necessary purchase contract agreement or purchase unit agreement, as applicable, has been duly executed and delivered by the Company and any other party thereto; and (vi) the Purchase Contracts or Purchase Units, as applicable, have been duly executed and delivered by the Company against payment therefor in accordance with any applicable purchase contract agreement or purchase unit agreement, and in accordance with such corporate action and applicable law and as contemplated in the Registration Statement and the prospectus supplement setting forth the terms of the Purchase Contracts or Purchase Units, as applicable, and the plan of distribution, then, upon the happening of such events, the Purchase Contracts or Purchase Units, as applicable, will constitute the valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws of general applicability relating to or affecting creditors' rights and to general equity principles.

7. With respect to the Subscription Rights: (i) the Registration Statement and any required post-effective amendments thereto have all become effective under the Securities Act and all prospectus supplements required by applicable law have been delivered and filed as required by such laws; (ii) all necessary corporate action has been taken by the Company to authorize, execute and deliver a subscription agreement or subscription rights certificate and to authorize the form, terms, execution and delivery of the Subscription Rights and to fix or otherwise determine the consideration to be received for the Subscription Rights and the terms of the offer and sale thereof; (iii) any legally required consents, approvals, authorizations and other orders of the Commission and any other regulatory authorities have been obtained; (iv) any shares of Common Stock or Preferred Stock or any Debt Securities purchasable upon exercise of such Subscription Rights, as applicable, have been duly and validly authorized and, in the case of shares of Common Stock or Preferred Stock, reserved for issuance and sale; (v) the subscription agreement or subscription rights certificate, as applicable, has been duly authorized, executed, and delivered by the Company and any other party thereto; and (vi) the Subscription Rights have been duly executed and delivered by the Company against payment therefor in accordance with any applicable subscription agreement or subscription rights certificate, and in accordance with such corporate action and applicable law and as contemplated in the Registration Statement and the prospectus supplement setting forth the terms of the Subscription Rights and the plan of distribution, then, upon the happening of such events, the Subscription Rights will constitute the valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws of general applicability relating to or affecting creditors' rights and to general equity principles.

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8. With respect to the Units: (i) the Registration Statement and any required post-effective amendments thereto have all become effective under the Securities Act and all prospectus supplements required by applicable law have been delivered and filed as required by such laws; (ii) all necessary corporate action has been taken by the Company to authorize, execute and deliver a unit agreement and to authorize the form, terms, execution and delivery of the Units and the shares of Common Stock, shares of Preferred Stock or Covered Securities underlying the Units, and the terms of the offer and sale thereof; (iii) any legally required consents, approvals, authorizations and other orders of the Commission and any other regulatory authorities have been obtained; (iv) any shares of Common Stock, shares of Preferred Stock, or Covered Securities to be issued pursuant to such Units have been duly and validly authorized and, in the case of shares of Common Stock or Preferred Stock, reserved for issuance and sale; (v) the unit agreement has been duly executed, and delivered by the Company and any other party thereto; and (vi) the Units and the other registered securities underlying the Units have been duly authorized, executed and delivered by the Company against payment therefor in accordance with any applicable unit agreement, and in accordance with such corporate action and applicable law and as contemplated in the Registration Statement and the prospectus supplement setting forth the terms of the Units and the other registered securities underlying the Units and the plan of distribution, then, upon the happening of such events, the Units will constitute the valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws of general applicability relating to or affecting creditors' rights and to general equity principles.

We express no opinion as to: (i) waivers of defenses, subrogation and related rights, rights to trial by jury, rights to object to venue, or other rights or benefits bestowed by operation of law; (ii) releases or waivers of unmatured claims or rights; (iii) indemnification, contribution, exculpation, or arbitration provisions, or provisions for the non-survival of representations, to the extent they purport to indemnify any party against, or release or limit any party's liability for, its own breach or failure to comply with statutory obligations, or to the extent such provisions are contrary to public policy; or (iv) provisions for liquidated damages and penalties, penalty interest and interest on interest.

Our opinions and statements expressed herein are restricted to matters governed by (i) the federal laws of the United States of America, (ii) the laws of the State of New York, and (iii) the laws of the State of Kansas, and we express no opinion as to any matter arising under the laws of any other jurisdiction, including, without limitation, the statutes, ordinances, rules and regulations of counties, towns, municipalities and special political subdivisions of any state. We advise you that the issues addressed by this letter may be governed in whole or in part by other laws, and we express no opinion as to whether any relevant difference exists between the laws upon which our opinions herein are based and any other laws that may actually govern.

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The opinions expressed herein are limited to the specific issues addressed herein, and we express no opinion, whether by implication or otherwise, as to any matters beyond that expressly stated herein. This letter shall not be construed as or deemed to be a guaranty or insuring agreement. The opinions expressed herein are rendered as of the date first written above and we have no continuing obligation hereunder to inform you of changes of law, including judicial interpretations of law, or of facts, circumstances, events or developments of which we become aware after the date hereof and which may alter, affect or modify the opinions expressed herein.

We hereby consent to the filing of this letter as Exhibit 5.1 to the Registration Statement and to the reference to this firm under the caption "Legal Matters" in the prospectus constituting part of the Registration Statement. In giving this consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act, or the rules of the Commission promulgated thereunder.

Sincerely,

**Stinson LLP**

/s/ Stinson LLP

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**Consent of Independent Registered Public Accounting Firm**

CrossFirst Bankshares, Inc.  
Leawood, Kansas

We consent to the incorporation by reference in this registration statement on Form S-3 of CrossFirst Bankshares, Inc. (the Company) of our report dated February 28, 2022, with respect to the consolidated financial statements of the Company as of December 31, 2021 and 2020, and for each of the years in the three-year period ended December 31, 2021, which report is included in the Company's Annual Report on Form 10-K for the year ended December 31, 2021. We also consent to the references to our firm under the caption "Experts" in this registration statement.

/s/ **FORVIS, LLP** (formerly BKD, LLP)

Kansas City, Missouri  
February 23, 2023

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**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM T-1**

**STATEMENT OF ELIGIBILITY UNDER  
THE TRUST INDENTURE ACT OF 1939 OF A  
CORPORATION DESIGNATED TO ACT AS TRUSTEE**

Check if an Application to Determine Eligibility of  
a Trustee Pursuant to Section 305(b)(2)

**U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION**

(Exact name of Trustee as specified in its charter)

**91-1821036**

I.R.S. Employer Identification No.

800 Nicollet Mall Minneapolis, Minnesota	55402
(Address of principal executive offices)	(Zip Code)

Wally Jones

U.S. Bank Trust Company, National Association  
333 Commerce Street, Suite 900  
Nashville, TN 37201  
(615) 251-0733

(Name, address and telephone number of agent for service)

**CrossFirst Bankshares, Inc.**

(Issuer with respect to the Securities)

Kansas	26-3212879
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

11440 Tomahawk Creek Parkway Leawood, KS	66211
(Address of Principal Executive Offices)	(Zip Code)

**Senior Debt Securities**

(Title of the Indenture Securities)

**FORM T-1**

**Item 1. GENERAL INFORMATION.** Furnish the following information as to the Trustee.

- a) *Name and address of each examining or supervising authority to which it is subject.*  
Comptroller of the Currency  
Washington, D.C.
- b) *Whether it is authorized to exercise corporate trust powers.*  
Yes

**Item 2. AFFILIATIONS WITH THE OBLIGOR.** *If the obligor is an affiliate of the Trustee, describe each such affiliation.*

None

**Items 3-15** *Items 3-15 are not applicable because to the best of the Trustee's knowledge, the obligor is not in default under any Indenture for which the Trustee acts as Trustee.*

**Item 16. LIST OF EXHIBITS:** *List below all exhibits filed as a part of this statement of eligibility and qualification.*

1. A copy of the Articles of Association of the Trustee, attached as Exhibit 1.
  2. A copy of the certificate of authority of the Trustee to commence business and exercise corporate trust powers, attached as Exhibit 2.
  3. A copy of the existing bylaws of the Trustee, attached as Exhibit 3.
  4. A copy of each Indenture referred to in Item 4. Not applicable.
  5. The consent of the Trustee required by Section 321(b) of the Trust Indenture Act of 1939, attached as Exhibit 5.
  6. Report of Condition of the Trustee as of December 31, 2022, published pursuant to law or the requirements of its supervising or examining authority, attached as Exhibit 6.
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**SIGNATURE**

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the Trustee, U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, has duly caused this statement of eligibility and qualification to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of Nashville, State of Tennessee on the 21st of February, 2023.

By: /s/ Wally Jones \_\_\_\_\_

Wally Jones  
Vice President

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**Exhibit 1**  
**ARTICLES OF ASSOCIATION**  
**OF**  
**U. S. BANK TRUST COMPANY, NATIONAL ASSOCIATION**

For the purpose of organizing an association (the "Association") to perform any lawful activities of national banks, the undersigned enter into the following Articles of Association:

**FIRST.** The title of this Association shall be U. S. Bank Trust Company, National Association.

**SECOND.** The main office of the Association shall be in the city of Portland, county of Multnomah, state of Oregon. The business of the Association will be limited to fiduciary powers and the support of activities incidental to the exercise of those powers. The Association may not expand or alter its business beyond that stated in this article without the prior approval of the Comptroller of the Currency.

**THIRD.** The board of directors of the Association shall consist of not less than five nor more than twenty-five persons, the exact number to be fixed and determined from time to time by resolution of a majority of the full board of directors or by resolution of a majority of the shareholders at any annual or special meeting thereof. Each director shall own common or preferred stock of the Association or of a holding company owning the Association, with an aggregate par, fair market, or equity value of not less than \$1,000, as of either (i) the date of purchase, (ii) the date the person became a director, or (iii) the date of that person's most recent election to the board of directors, whichever is more recent. Any combination of common or preferred stock of the Association or holding company may be used.

Any vacancy in the board of directors may be filled by action of a majority of the remaining directors between meetings of shareholders. The board of directors may increase the number of directors up to the maximum permitted by law. Terms of directors, including directors selected to fill vacancies, shall expire at the next regular meeting of shareholders at which directors are elected, unless the directors resign or are removed from office. Despite the expiration of a director's term, the director shall continue to serve until his or her successor is elected and qualified or until there is a decrease in the number of directors and his or her position is eliminated.

Honorary or advisory members of the board of directors, without voting power or power of final decision in matters concerning the business of the Association, may be appointed by resolution of a majority of the full board of directors, or by resolution of shareholders at any annual or special meeting. Honorary or advisory directors shall not be counted to determine the number of directors of the Association or the presence of a quorum in connection with any board action, and shall not be required to own qualifying shares.

**FOURTH.** There shall be an annual meeting of the shareholders to elect directors and transact whatever other business may be brought before the meeting. It shall be held at the main office or any other convenient place the board of directors may designate, on the day of each year specified therefor in the Bylaws, or if that day falls on a legal holiday in the state in which the Association is located, on the next following banking day. If no election is held on the day fixed or in the event of a legal holiday on the following banking day, an election may be held on any subsequent day within 60 days of the day fixed, to be designated by the board of directors, or, if the directors fail to fix the day, by shareholders representing two-thirds of the shares issued and outstanding. In all cases, at least 10 days' advance notice of the meeting shall be given to the shareholders by first-class mail.

In all elections of directors, the number of votes each common shareholder may cast will be determined by multiplying the number of shares he or she owns by the number of directors to be elected. Those votes may be cumulated and cast for a single candidate or may be distributed among two or more candidates in the manner selected by the shareholder. On all other questions, each common shareholder shall be entitled to one vote for each share of stock held by him or her.

A director may resign at any time by delivering written notice to the board of directors, its chairperson, or to the Association, which resignation shall be effective when the notice is delivered unless the notice specifies a later effective date.

A director may be removed by the shareholders at a meeting called to remove him or her, when notice of the meeting stating that the purpose or one of the purposes is to remove him or her is provided, if there is a failure to fulfill one of the affirmative requirements for qualification, or for cause; provided, however, that a director may not be removed if the number of votes sufficient to elect him or her under cumulative voting is voted against his or her removal.

**FIFTH.** The authorized amount of capital stock of the Association shall be 1,000,000 shares of common stock of the par value of ten dollars (\$10) each; but said capital stock may be increased or decreased from time to time, according to the provisions of the laws of the United States. The Association shall have only one class of capital stock.

No holder of shares of the capital stock of any class of the Association shall have any preemptive or preferential right of subscription to any shares of any class of stock of the Association, whether now or hereafter authorized, or to any obligations convertible into stock of the Association, issued, or sold, nor any right of subscription to any thereof other than such, if any, as the board of directors, in its discretion, may from time to time determine and at such price as the board of directors may from time to time fix.

Transfers of the Association's stock are subject to the prior written approval of a federal depository institution regulatory agency. If no other agency approval is required, the approval of the Comptroller of the Currency must be obtained prior to any such transfers.

Unless otherwise specified in the Articles of Association or required by law, (1) all matters requiring shareholder action, including amendments to the Articles of Association must be approved by shareholders owning a majority voting interest in the outstanding voting stock, and (2) each shareholder shall be entitled to one vote per share.



Unless otherwise specified in the Articles of Association or required by law, all shares of voting stock shall be voted together as a class, on any matters requiring shareholder approval.

Unless otherwise provided in the Bylaws, the record date for determining shareholders entitled to notice of and to vote at any meeting is the close of business on the day before the first notice is mailed or otherwise sent to the shareholders, provided that in no event may a record date be more than 70 days before the meeting.

The Association, at any time and from time to time, may authorize and issue debt obligations, whether subordinated, without the approval of the shareholders. Obligations classified as debt, whether subordinated, which may be issued by the Association without the approval of shareholders, do not carry voting rights on any issue, including an increase or decrease in the aggregate number of the securities, or the exchange or reclassification of all or part of securities into securities of another class or series.

**SIXTH.** The board of directors shall appoint one of its members president of this Association and one of its members chairperson of the board and shall have the power to appoint one or more vice presidents, a secretary who shall keep minutes of the directors' and shareholders' meetings and be responsible for authenticating the records of the Association, and such other officers and employees as may be required to transact the business of this Association. A duly appointed officer may appoint one or more officers or assistant officers if authorized by the board of directors in accordance with the Bylaws.

The board of directors shall have the power to:

- (1) Define the duties of the officers, employees, and agents of the Association.
- (2) Delegate the performance of its duties, but not the responsibility for its duties, to the officers, employees, and agents of the Association.
- (3) Fix the compensation and enter employment contracts with its officers and employees upon reasonable terms and conditions consistent with applicable law.
- (4) Dismiss officers and employees.
- (5) Require bonds from officers and employees and to fix the penalty thereof.
- (6) Ratify written policies authorized by the Association's management or committees of the board.
- (7) Regulate the manner any increase or decrease of the capital of the Association shall be made; provided that nothing herein shall restrict the power of shareholders to increase or decrease the capital of the Association in accordance with law, and nothing shall raise or lower from two-thirds the percentage required for shareholder approval to increase or reduce the capital.

- (8) Manage and administer the business and affairs of the Association.
- (9) Adopt initial Bylaws, not inconsistent with law or the Articles of Association, for managing the business and regulating the affairs of the Association.
- (10) Amend or repeal Bylaws, except to the extent that the Articles of Association reserve this power in whole or in part to the shareholders.
- (11) Make contracts.
- (12) Generally perform all acts that are legal for a board of directors to perform.

**SEVENTH.** The board of directors shall have the power to change the location of the main office to any authorized branch within the limits of the city of Portland, Oregon, without the approval of the shareholders, or with a vote of shareholders owning two-thirds of the stock of the Association for a location outside such limits and upon receipt of a certificate of approval from the Comptroller of the Currency, to any other location within or outside the limits of the city of Portland, Oregon, but not more than thirty miles beyond such limits. The board of directors shall have the power to establish or change the location of any office or offices of the Association to any other location permitted under applicable law, without approval of shareholders, subject to approval by the Comptroller of the Currency.

**EIGHTH.** The corporate existence of this Association shall continue until termination according to the laws of the United States.

**NINTH.** The board of directors of the Association, or any shareholder owning, in the aggregate, not less than 25 percent of the stock of the Association, may call a special meeting of shareholders at any time. Unless otherwise provided by the Bylaws or the laws of the United States, or waived by shareholders, a notice of the time, place, and purpose of every annual and special meeting of the shareholders shall be given by first-class mail, postage prepaid, mailed at least 10, and no more than 60, days prior to the date of the meeting to each shareholder of record at his/her address as shown upon the books of the Association. Unless otherwise provided by the Bylaws, any action requiring approval of shareholders must be effected at a duly called annual or special meeting.

**TENTH.** These Articles of Association may be amended at any regular or special meeting of the shareholders by the affirmative vote of the holders of a majority of the stock of the Association, unless the vote of the holders of a greater amount of stock is required by law, and in that case by the vote of the holders of such greater amount; provided, that the scope of the Association's activities and services may not be expanded without the prior written approval of the Comptroller of the Currency. The Association's board of directors may propose one or more amendments to the Articles of Association for submission to the shareholders.

In witness whereof, we have hereunto set our hands this 11<sup>th</sup> of June, 1997.

/s/ Jeffrey T. Grubb

\_\_\_\_\_  
Jeffrey T. Grubb

/s/ Robert D. Szniewajs

\_\_\_\_\_  
Robert D. Szniewajs

/s/ Dwight V. Board

\_\_\_\_\_  
Dwight V. Board

/s/ P.K. Chatterjee

\_\_\_\_\_  
P. K. Chatterjee

/s/ Robert Lane

\_\_\_\_\_  
Robert Lane

\_\_\_\_\_



**CERTIFICATE OF CORPORATE EXISTENCE AND FIDUCIARY POWERS**

I, Michael J. Hsu, Acting Comptroller of the Currency, do hereby certify that:

1. The Comptroller of the Currency, pursuant to Revised Statutes 324, et seq, as amended, and 12 USC 1, et seq, as amended, has possession, custody, and control of all records pertaining to the chartering, regulation, and supervision of all national banking associations.
2. "U.S. Bank Trust Company, National Association," Portland, Oregon (Charter No. 23412), is a national banking association formed under the laws of the United States and is authorized thereunder to transact the business of banking and exercise fiduciary powers on the date of this certificate.

IN TESTIMONY WHEREOF, today, January 6, 2023, I have hereunto subscribed my name and caused my seal of office to be affixed to these presents at the U.S. Department of the Treasury, in the City of Washington, District of Columbia.

A handwritten signature in black ink, appearing to read "Michael J. Hsu".

Acting Comptroller of the Currency



Exhibit 3

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION

AMENDED AND RESTATED BYLAWS

ARTICLE I

Meetings of Shareholders

Section 1.1. Annual Meeting. The annual meeting of the shareholders, for the election of directors and the transaction of any other proper business, shall be held at a time and place as the Chairman or President may designate. Notice of such meeting shall be given not less than ten (10) days or more than sixty (60) days prior to the date thereof, to each shareholder of the Association, unless the Office of the Comptroller of the Currency (the "OCC") determines that an emergency circumstance exists. In accordance with applicable law, the sole shareholder of the Association is permitted to waive notice of the meeting. If, for any reason, an election of directors is not made on the designated day, the election shall be held on some subsequent day, as soon thereafter as practicable, with prior notice thereof. Failure to hold an annual meeting as required by these Bylaws shall not affect the validity of any corporate action or work a forfeiture or dissolution of the Association.

Section 1.2. Special Meetings. Except as otherwise specially provided by law, special meetings of the shareholders may be called for any purpose, at any time by a majority of the board of directors (the "Board"), or by any shareholder or group of shareholders owning at least ten percent of the outstanding stock. Every such special meeting, unless otherwise provided by law, shall be called upon not less than ten (10) days nor more than sixty (60) days prior notice stating the purpose of the meeting.

Section 1.3. Nominations for Directors. Nominations for election to the Board may be made by the Board or by any shareholder.

Section 1.4. Proxies. Shareholders may vote at any meeting of the shareholders by proxies duly authorized in writing. Proxies shall be valid only for one meeting and any adjournments of such meeting and shall be filed with the records of the meeting.

Section 1.5. Record Date. The record date for determining shareholders entitled to notice and to vote at any meeting will be thirty days before the date of such meeting, unless otherwise determined by the Board.

Section 1.6. Quorum and Voting. A majority of the outstanding capital stock, represented in person or by proxy, shall constitute a quorum at any meeting of shareholders, unless otherwise provided by law, but less than a quorum may adjourn any meeting, from time to time, and the meeting may be held as adjourned without further notice. A majority of the votes cast shall decide every question or matter submitted to the shareholders at any meeting, unless otherwise provided by law or by the Articles of Association.

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Section 1.7. Inspectors. The Board may, and in the event of its failure so to do, the Chairman of the Board may appoint Inspectors of Election who shall determine the presence of quorum, the validity of proxies, and the results of all elections and all other matters voted upon by shareholders at all annual and special meetings of shareholders.

Section 1.8. Waiver and Consent. The shareholders may act without notice or a meeting by a unanimous written consent by all shareholders.

Section 1.9. Remote Meetings. The Board shall have the right to determine that a shareholder meeting not be held at a place, but instead be held solely by means of remote communication in the manner and to the extent permitted by the General Corporation Law of the State of Delaware.

ARTICLE II  
Directors

Section 2.1. Board of Directors. The Board shall have the power to manage and administer the business and affairs of the Association. Except as expressly limited by law, all corporate powers of the Association shall be vested in and may be exercised by the Board.

Section 2.2. Term of Office. The directors of this Association shall hold office for one year and until their successors are duly elected and qualified, or until their earlier resignation or removal.

Section 2.3. Powers. In addition to the foregoing, the Board shall have and may exercise all of the powers granted to or conferred upon it by the Articles of Association, the Bylaws and by law.

Section 2.4. Number. As provided in the Articles of Association, the Board of this Association shall consist of no less than five nor more than twenty-five members, unless the OCC has exempted the Association from the twenty-five- member limit. The Board shall consist of a number of members to be fixed and determined from time to time by resolution of the Board or the shareholders at any meeting thereof, in accordance with the Articles of Association. Between meetings of the shareholders held for the purpose of electing directors, the Board by a majority vote of the full Board may increase the size of the Board but not to more than a total of twenty-five directors, and fill any vacancy so created in the Board; provided that the Board may increase the number of directors only by up to two directors, when the number of directors last elected by shareholders was fifteen or fewer, and by up to four directors, when the number of directors last elected by shareholders was sixteen or more. Each director shall own a qualifying equity interest in the Association or a company that has control of the Association in each case as required by applicable law. Each director shall own such qualifying equity interest in his or her own right and meet any minimum threshold ownership required by applicable law.

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Section 2.5. Organization Meeting. The newly elected Board shall meet for the purpose of organizing the new Board and electing and appointing such officers of the Association as may be appropriate. Such meeting shall be held on the day of the election or as soon thereafter as practicable, and, in any event, within thirty days thereafter, at such time and place as the Chairman or President may designate. If, at the time fixed for such meeting, there shall not be a quorum present, the directors present may adjourn the meeting until a quorum is obtained.

Section 2.6. Regular Meetings. The regular meetings of the Board shall be held, without notice, as the Chairman or President may designate and deem suitable.

Section 2.7. Special Meetings. Special meetings of the Board may be called at any time, at any place and for any purpose by the Chairman of the Board or the President of the Association, or upon the request of a majority of the entire Board. Notice of every special meeting of the Board shall be given to the directors at their usual places of business, or at such other addresses as shall have been furnished by them for the purpose. Such notice shall be given at least twelve hours (three hours if meeting is to be conducted by conference telephone) before the meeting by telephone or by being personally delivered, mailed, or electronically delivered. Such notice need not include a statement of the business to be transacted at, or the purpose of, any such meeting.

Section 2.8. Quorum and Necessary Vote. A majority of the directors shall constitute a quorum at any meeting of the Board, except when otherwise provided by law; but less than a quorum may adjourn any meeting, from time to time, and the meeting may be held as adjourned without further notice. Unless otherwise provided by law or the Articles or Bylaws of this Association, once a quorum is established, any act by a majority of those directors present and voting shall be the act of the Board.

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Section 2.9. Written Consent. Except as otherwise required by applicable laws and regulations, the Board may act without a meeting by a unanimous written consent by all directors, to be filed with the Secretary of the Association as part of the corporate records.

Section 2.10. Remote Meetings. Members of the Board, or of any committee thereof, may participate in a meeting of such Board or committee by means of conference telephone, video or similar communications equipment by means of which all persons participating in the meeting can hear each other and such participation shall constitute presence in person at such meeting.

Section 2.11. Vacancies. When any vacancy occurs among the directors, the remaining members of the Board may appoint a director to fill such vacancy at any regular meeting of the Board, or at a special meeting called for that purpose.

ARTICLE III  
Committees

Section 3.1. Advisory Board of Directors. The Board may appoint persons, who need not be directors, to serve as advisory directors on an advisory board of directors established with respect to the business affairs of either this Association alone or the business affairs of a group of affiliated organizations of which this Association is one. Advisory directors shall have such powers and duties as may be determined by the Board, provided, that the Board's responsibility for the business and affairs of this Association shall in no respect be delegated or diminished.

Section 3.2. Trust Audit Committee. At least once during each calendar year, the Association shall arrange for a suitable audit (by internal or external auditors) of all significant fiduciary activities under the direction of its trust audit committee, a function that will be fulfilled by the Audit Committee of the financial holding company that is the ultimate parent of this Association. The Association shall note the results of the audit (including significant actions taken as a result of the audit) in the minutes of the Board. In lieu of annual audits, the Association may adopt a continuous audit system in accordance with 12 C.F.R. § 9.9(b).

The Audit Committee of the financial holding company that is the ultimate parent of this Association, fulfilling the function of the trust audit committee:

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(1) Must not include any officers of the Association or an affiliate who participate significantly in the administration of the Association's fiduciary activities; and

(2) Must consist of a majority of members who are not also members of any committee to which the Board has delegated power to manage and control the fiduciary activities of the Association.

Section 3.3. Executive Committee. The Board may appoint an Executive Committee which shall consist of at least three directors and which shall have, and may exercise, to the extent permitted by applicable law, all the powers of the Board between meetings of the Board or otherwise when the Board is not meeting.

Section 3.4. Trust Management Committee. The Board of this Association shall appoint a Trust Management Committee to provide oversight of the fiduciary activities of the Association. The Trust Management Committee shall determine policies governing fiduciary activities. The Trust Management Committee or such sub-committees, officers or others as may be duly designated by the Trust Management Committee shall oversee the processes related to fiduciary activities to assure conformity with fiduciary policies it establishes, including ratifying the acceptance and the closing out or relinquishment of all trusts. The Trust Management Committee will provide regular reports of its activities to the Board.

Section 3.5. Other Committees. The Board may appoint, from time to time, committees of one or more persons who need not be directors, for such purposes and with such powers as the Board may determine; however, the Board will not delegate to any committee any powers or responsibilities that it is prohibited from delegating under any law or regulation. In addition, either the Chairman or the President may appoint, from time to time, committees of one or more officers, employees, agents or other persons, for such purposes and with such powers as either the Chairman or the President deems appropriate and proper. Whether appointed by the Board, the Chairman, or the President, any such committee shall at all times be subject to the direction and control of the Board.

Section 3.6. Meetings, Minutes and Rules. An advisory board of directors and/or committee shall meet as necessary in consideration of the purpose of the advisory board of directors or committee, and shall maintain minutes in sufficient detail to indicate actions taken or recommendations made; unless required by the members, discussions, votes or other specific details need not be reported. An advisory board of directors or a committee may, in consideration of its purpose, adopt its own rules for the exercise of any of its functions or authority.

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ARTICLE IV  
Officers

Section 4.1. Chairman of the Board. The Board may appoint one of its members to be Chairman of the Board to serve at the pleasure of the Board. The Chairman shall supervise the carrying out of the policies adopted or approved by the Board; shall have general executive powers, as well as the specific powers conferred by these Bylaws; and shall also have and may exercise such powers and duties as from time to time may be conferred upon or assigned by the Board.

Section 4.2. President. The Board may appoint one of its members to be President of the Association. In the absence of the Chairman, the President shall preside at any meeting of the Board. The President shall have general executive powers, and shall have and may exercise any and all other powers and duties pertaining by law, regulation or practice, to the office of President, or imposed by these Bylaws. The President shall also have and may exercise such powers and duties as from time to time may be conferred or assigned by the Board.

Section 4.3. Vice President. The Board may appoint one or more Vice Presidents who shall have such powers and duties as may be assigned by the Board and to perform the duties of the President on those occasions when the President is absent, including presiding at any meeting of the Board in the absence of both the Chairman and President.

Section 4.4. Secretary. The Board shall appoint a Secretary, or other designated officer who shall be Secretary of the Board and of the Association, and shall keep accurate minutes of all meetings. The Secretary shall attend to the giving of all notices required by these Bylaws to be given; shall be custodian of the corporate seal, records, documents and papers of the Association; shall provide for the keeping of proper records of all transactions of the Association; shall, upon request, authenticate any records of the Association; shall have and may exercise any and all other powers and duties pertaining by law, regulation or practice, to the Secretary, or imposed by these Bylaws; and shall also perform such other duties as may be assigned from time to time by the Board. The Board may appoint one or more Assistant Secretaries with such powers and duties as the Board, the President or the Secretary shall from time to time determine.

Section 4.5. Other Officers. The Board may appoint, and may authorize the Chairman, the President or any other officer to appoint, any officer as from time to time may appear to the Board, the Chairman, the President or such other officer to be required or desirable to transact the business of the Association. Such officers shall exercise such powers and perform such duties as pertain to their several offices, or as may be conferred upon or assigned to them by these Bylaws, the Board, the Chairman, the President or such other authorized officer. Any person may hold two offices.

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Section 4.6. Tenure of Office. The Chairman or the President and all other officers shall hold office until their respective successors are elected and qualified or until their earlier death, resignation, retirement, disqualification or removal from office, subject to the right of the Board or authorized officer to discharge any officer at any time.

#### ARTICLE V

##### Stock

Section 5.1. The Board may authorize the issuance of stock either in certificated or in uncertificated form. Certificates for shares of stock shall be in such form as the Board may from time to time prescribe. If the Board issues certificated stock, the certificate shall be signed by the President, Secretary or any other such officer as the Board so determines. Shares of stock shall be transferable on the books of the Association, and a transfer book shall be kept in which all transfers of stock shall be recorded. Every person becoming a shareholder by such transfer shall, in proportion to such person's shares, succeed to all rights of the prior holder of such shares. Each certificate of stock shall recite on its face that the stock represented thereby is transferable only upon the books of the Association properly endorsed. The Board may impose conditions upon the transfer of the stock reasonably calculated to simplify the work of the Association for stock transfers, voting at shareholder meetings, and related matters, and to protect it against fraudulent transfers.

#### ARTICLE VI

##### Corporate Seal

Section 6.1. The Association shall have no corporate seal; provided, however, that if the use of a seal is required by, or is otherwise convenient or advisable pursuant to, the laws or regulations of any jurisdiction, the following seal may be used, and the Chairman, the President, the Secretary and any Assistant Secretary shall have the authority to affix such seal:

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ARTICLE VII  
Miscellaneous Provisions

Section 7.1. Execution of Instruments. All agreements, checks, drafts, orders, indentures, notes, mortgages, deeds, conveyances, transfers, endorsements, assignments, certificates, declarations, receipts, discharges, releases, satisfactions, settlements, petitions, schedules, accounts, affidavits, bonds, undertakings, guarantees, proxies and other instruments or documents may be signed, countersigned, executed, acknowledged, endorsed, verified, delivered or accepted on behalf of the Association, whether in a fiduciary capacity or otherwise, by any officer of the Association, or such employee or agent as may be designated from time to time by the Board by resolution, or by the Chairman or the President by written instrument, which resolution or instrument shall be certified as in effect by the Secretary or an Assistant Secretary of the Association. The provisions of this section are supplementary to any other provision of the Articles of Association or Bylaws.

Section 7.2. Records. The Articles of Association, the Bylaws as revised or amended from time to time and the proceedings of all meetings of the shareholders, the Board, and standing committees of the Board, shall be recorded in appropriate minute books provided for the purpose. The minutes of each meeting shall be signed by the Secretary, or other officer appointed to act as Secretary of the meeting.

Section 7.3. Trust Files. There shall be maintained in the Association files all fiduciary records necessary to assure that its fiduciary responsibilities have been properly undertaken and discharged.

Section 7.4. Trust Investments. Funds held in a fiduciary capacity shall be invested according to the instrument establishing the fiduciary relationship and according to law. Where such instrument does not specify the character and class of investments to be made and does not vest in the Association a discretion in the matter, funds held pursuant to such instrument shall be invested in investments in which corporate fiduciaries may invest under law.

Section 7.5. Notice. Whenever notice is required by the Articles of Association, the Bylaws or law, such notice shall be by mail, postage prepaid, e-mail, in person, or by any other means by which such notice can reasonably be expected to be received, using the address of the person to receive such notice, or such other personal data, as may appear on the records of the Association. Except where specified otherwise in these Bylaws, prior notice shall be proper if given not more than 30 days nor less than 10 days prior to the event for which notice is given.

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ARTICLE VIII  
Indemnification

Section 8.1. The Association shall indemnify such persons for such liabilities in such manner under such circumstances and to such extent as permitted by Section 145 of the Delaware General Corporation Law, as now enacted or hereafter amended. The Board may authorize the purchase and maintenance of insurance and/or the execution of individual agreements for the purpose of such indemnification, and the Association shall advance all reasonable costs and expenses (including attorneys' fees) incurred in defending any action, suit or proceeding to all persons entitled to indemnification under this Section 8.1. Such insurance shall be consistent with the requirements of 12 C.F.R. § 7.2014 and shall exclude coverage of liability for a formal order assessing civil money penalties against an institution-affiliated party, as defined at 12 U.S.C. § 1813(u).

Section 8.2. Notwithstanding Section 8.1, however, (a) any indemnification payments to an institution-affiliated party, as defined at 12 U.S.C. § 1813(u), for an administrative proceeding or civil action initiated by a federal banking agency, shall be reasonable and consistent with the requirements of 12 U.S.C. § 1828(k) and the implementing regulations thereunder; and (b) any indemnification payments and advancement of costs and expenses to an institution-affiliated party, as defined at 12 U.S.C. § 1813(u), in cases involving an administrative proceeding or civil action not initiated by a federal banking agency, shall be in accordance with Delaware General Corporation Law and consistent with safe and sound banking practices.

ARTICLE IX  
Bylaws: Interpretation and Amendment

Section 9.1. These Bylaws shall be interpreted in accordance with and subject to appropriate provisions of law, and may be added to, altered, amended, or repealed, at any regular or special meeting of the Board.

Section 9.2. A copy of the Bylaws and all amendments shall at all times be kept in a convenient place at the principal office of the Association, and shall be open for inspection to all shareholders during Association hours.

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ARTICLE X  
Miscellaneous Provisions

Section 10.1. Fiscal Year. The fiscal year of the Association shall begin on the first day of January in each year and shall end on the thirty-first day of December following.

Section 10.2. Governing Law. This Association designates the Delaware General Corporation Law, as amended from time to time, as the governing law for its corporate governance procedures, to the extent not inconsistent with Federal banking statutes and regulations or bank safety and soundness.

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(February 8, 2021)

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**Exhibit 5**

**CONSENT**

In accordance with Section 321(b) of the Trust Indenture Act of 1939, the undersigned, U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION hereby consents that reports of examination of the undersigned by Federal, State, Territorial or District authorities may be furnished by such authorities to the Securities and Exchange Commission upon its request therefor.

Dated: February 21, 2023

By: /s/ Wally Jones

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Wally Jones

Vice President

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**Exhibit 6**  
**U.S. Bank Trust Company, National Association**  
**Statement of Financial Condition**  
as of 12/31/2022

(\$000's)

	<u>12/31/2022</u>
<b>Assets</b>	
Cash and Balances Due From Depository Institutions	\$ 741,758
Securities	4,322
Federal Funds	0
Loans & Lease Financing Receivables	0
Fixed Assets	2,186
Intangible Assets	581,108
Other Assets	163,734
<b>Total Assets</b>	<b>\$ 1,493,108</b>
<b>Liabilities</b>	
Deposits	\$ 0
Fed Funds	0
Treasury Demand Notes	0
Trading Liabilities	0
Other Borrowed Money	0
Acceptances	0
Subordinated Notes and Debentures	0
Other Liabilities	107,167
<b>Total Liabilities</b>	<b>\$ 107,167</b>
<b>Equity</b>	
Common and Preferred Stock	200
Surplus	1,171,635
Undivided Profits	214,106
Minority Interest in Subsidiaries	0
<b>Total Equity Capital</b>	<b>\$ 1,385,941</b>
<b>Total Liabilities and Equity Capital</b>	<b>\$ 1,493,108</b>

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**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM T-1**

**STATEMENT OF ELIGIBILITY UNDER  
THE TRUST INDENTURE ACT OF 1939 OF A  
CORPORATION DESIGNATED TO ACT AS TRUSTEE**

Check if an Application to Determine Eligibility of  
a Trustee Pursuant to Section 305(b)(2)

**U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION**

(Exact name of Trustee as specified in its charter)

**91-1821036**

I.R.S. Employer Identification No.

800 Nicollet Mall Minneapolis, Minnesota	55402
(Address of principal executive offices)	(Zip Code)

Wally Jones  
U.S. Bank Trust Company, National Association  
333 Commerce Street, Suite 900  
Nashville, TN 37201  
(615) 251-0733  
(Name, address and telephone number of agent for service)

**CrossFirst Bankshares, Inc.**

(Issuer with respect to the Securities)

Kansas	26-3212879
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

11440 Tomahawk Creek Parkway Leawood, KS	66211
(Address of Principal Executive Offices)	(Zip Code)

**Subordinated Debt Securities**

(Title of the Indenture Securities)

**FORM T-1**

**Item 1. GENERAL INFORMATION.** Furnish the following information as to the Trustee.

- a) *Name and address of each examining or supervising authority to which it is subject.*  
Comptroller of the Currency  
Washington, D.C.
- b) *Whether it is authorized to exercise corporate trust powers.*  
Yes

**Item 2. AFFILIATIONS WITH THE OBLIGOR.** *If the obligor is an affiliate of the Trustee, describe each such affiliation.*  
None

**Items 3-15** *Items 3-15 are not applicable because to the best of the Trustee's knowledge, the obligor is not in default under any Indenture for which the Trustee acts as Trustee.*

**Item 16. LIST OF EXHIBITS:** *List below all exhibits filed as a part of this statement of eligibility and qualification.*

- 1. A copy of the Articles of Association of the Trustee, attached as Exhibit 1.
  - 2. A copy of the certificate of authority of the Trustee to commence business and exercise corporate trust powers, attached as Exhibit 2.
  - 3. A copy of the existing bylaws of the Trustee, attached as Exhibit 3.
  - 4. A copy of each Indenture referred to in Item 4. Not applicable.
  - 5. The consent of the Trustee required by Section 321(b) of the Trust Indenture Act of 1939, attached as Exhibit 5.
  - 6. Report of Condition of the Trustee as of December 31, 2022, published pursuant to law or the requirements of its supervising or examining authority, attached as Exhibit 6.
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**SIGNATURE**

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the Trustee, U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, has duly caused this statement of eligibility and qualification to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of Nashville, State of Tennessee on the 21st of February, 2023.

By: /s/ Wally Jones  
Wally Jones  
Vice President

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**Exhibit 1**  
**ARTICLES OF ASSOCIATION OF**  
**U. S. BANK TRUST COMPANY, NATIONAL ASSOCIATION**

For the purpose of organizing an association (the "Association") to perform any lawful activities of national banks, the undersigned enter into the following Articles of Association:

**FIRST.** The title of this Association shall be U. S. Bank Trust Company, National Association.

**SECOND.** The main office of the Association shall be in the city of Portland, county of Multnomah, state of Oregon. The business of the Association will be limited to fiduciary powers and the support of activities incidental to the exercise of those powers. The Association may not expand or alter its business beyond that stated in this article without the prior approval of the Comptroller of the Currency.

**THIRD.** The board of directors of the Association shall consist of not less than five nor more than twenty-five persons, the exact number to be fixed and determined from time to time by resolution of a majority of the full board of directors or by resolution of a majority of the shareholders at any annual or special meeting thereof. Each director shall own common or preferred stock of the Association or of a holding company owning the Association, with an aggregate par, fair market, or equity value of not less than \$1,000, as of either (i) the date of purchase, (ii) the date the person became a director, or (iii) the date of that person's most recent election to the board of directors, whichever is more recent. Any combination of common or preferred stock of the Association or holding company may be used.

Any vacancy in the board of directors may be filled by action of a majority of the remaining directors between meetings of shareholders. The board of directors may increase the number of directors up to the maximum permitted by law. Terms of directors, including directors selected to fill vacancies, shall expire at the next regular meeting of shareholders at which directors are elected, unless the directors resign or are removed from office. Despite the expiration of a director's term, the director shall continue to serve until his or her successor is elected and qualified or until there is a decrease in the number of directors and his or her position is eliminated.

Honorary or advisory members of the board of directors, without voting power or power of final decision in matters concerning the business of the Association, may be appointed by resolution of a majority of the full board of directors, or by resolution of shareholders at any annual or special meeting. Honorary or advisory directors shall not be counted to determine the number of directors of the Association or the presence of a quorum in connection with any board action, and shall not be required to own qualifying shares.

**FOURTH.** There shall be an annual meeting of the shareholders to elect directors and transact whatever other business may be brought before the meeting. It shall be held at the main office or any other convenient place the board of directors may designate, on the day of each year specified therefor in the Bylaws, or if that day falls on a legal holiday in the state in which the Association is located, on the next following banking day. If no election is held on the day fixed or in the event of a legal holiday on the following banking day, an election may be held on any subsequent day within 60 days of the day fixed, to be designated by the board of directors, or, if the directors fail to fix the day, by shareholders representing two-thirds of the shares issued and outstanding. In all cases, at least 10 days' advance notice of the meeting shall be given to the shareholders by first-class mail.

In all elections of directors, the number of votes each common shareholder may cast will be determined by multiplying the number of shares he or she owns by the number of directors to be elected. Those votes may be cumulated and cast for a single candidate or may be distributed among two or more candidates in the manner selected by the shareholder. On all other questions, each common shareholder shall be entitled to one vote for each share of stock held by him or her.

A director may resign at any time by delivering written notice to the board of directors, its chairperson, or to the Association, which resignation shall be effective when the notice is delivered unless the notice specifies a later effective date.

A director may be removed by the shareholders at a meeting called to remove him or her, when notice of the meeting stating that the purpose or one of the purposes is to remove him or her is provided, if there is a failure to fulfill one of the affirmative requirements for qualification, or for cause; provided, however, that a director may not be removed if the number of votes sufficient to elect him or her under cumulative voting is voted against his or her removal.

**FIFTH.** The authorized amount of capital stock of the Association shall be 1,000,000 shares of common stock of the par value of ten dollars (\$10) each; but said capital stock may be increased or decreased from time to time, according to the provisions of the laws of the United States. The Association shall have only one class of capital stock.

No holder of shares of the capital stock of any class of the Association shall have any preemptive or preferential right of subscription to any shares of any class of stock of the Association, whether now or hereafter authorized, or to any obligations convertible into stock of the Association, issued, or sold, nor any right of subscription to any thereof other than such, if any, as the board of directors, in its discretion, may from time to time determine and at such price as the board of directors may from time to time fix.

Transfers of the Association's stock are subject to the prior written approval of a federal depository institution regulatory agency. If no other agency approval is required, the approval of the Comptroller of the Currency must be obtained prior to any such transfers.

Unless otherwise specified in the Articles of Association or required by law, (1) all matters requiring shareholder action, including amendments to the Articles of Association must be approved by shareholders owning a majority voting interest in the outstanding voting stock, and (2) each shareholder shall be entitled to one vote per share.

Unless otherwise specified in the Articles of Association or required by law, all shares of voting stock shall be voted together as a class, on any matters requiring shareholder approval.

Unless otherwise provided in the Bylaws, the record date for determining shareholders entitled to notice of and to vote at any meeting is the close of business on the day before the first notice is mailed or otherwise sent to the shareholders, provided that in no event may a record date be more than 70 days before the meeting.

The Association, at any time and from time to time, may authorize and issue debt obligations, whether subordinated, without the approval of the shareholders. Obligations classified as debt, whether subordinated, which may be issued by the Association without the approval of shareholders, do not carry voting rights on any issue, including an increase or decrease in the aggregate number of the securities, or the exchange or reclassification of all or part of securities into securities of another class or series.

**SIXTH.** The board of directors shall appoint one of its members president of this Association and one of its members chairperson of the board and shall have the power to appoint one or more vice presidents, a secretary who shall keep minutes of the directors' and shareholders' meetings and be responsible for authenticating the records of the Association, and such other officers and employees as may be required to transact the business of this Association. A duly appointed officer may appoint one or more officers or assistant officers if authorized by the board of directors in accordance with the Bylaws.

The board of directors shall have the power to:

- (1) Define the duties of the officers, employees, and agents of the Association.
- (2) Delegate the performance of its duties, but not the responsibility for its duties, to the officers, employees, and agents of the Association.
- (3) Fix the compensation and enter employment contracts with its officers and employees upon reasonable terms and conditions consistent with applicable law.
- (4) Dismiss officers and employees.
- (5) Require bonds from officers and employees and to fix the penalty thereof.
- (6) Ratify written policies authorized by the Association's management or committees of the board.
- (7) Regulate the manner any increase or decrease of the capital of the Association shall be made; provided that nothing herein shall restrict the power of shareholders to increase or decrease the capital of the Association in accordance with law, and nothing shall raise or lower from two-thirds the percentage required for shareholder approval to increase or reduce the capital.

- (8) Manage and administer the business and affairs of the Association.
- (9) Adopt initial Bylaws, not inconsistent with law or the Articles of Association, for managing the business and regulating the affairs of the Association.
- (10) Amend or repeal Bylaws, except to the extent that the Articles of Association reserve this power in whole or in part to the shareholders.
- (11) Make contracts.
- (12) Generally perform all acts that are legal for a board of directors to perform.

**SEVENTH.** The board of directors shall have the power to change the location of the main office to any authorized branch within the limits of the city of Portland, Oregon, without the approval of the shareholders, or with a vote of shareholders owning two-thirds of the stock of the Association for a location outside such limits and upon receipt of a certificate of approval from the Comptroller of the Currency, to any other location within or outside the limits of the city of Portland, Oregon, but not more than thirty miles beyond such limits. The board of directors shall have the power to establish or change the location of any office or offices of the Association to any other location permitted under applicable law, without approval of shareholders, subject to approval by the Comptroller of the Currency.

**EIGHTH.** The corporate existence of this Association shall continue until termination according to the laws of the United States.

**NINTH.** The board of directors of the Association, or any shareholder owning, in the aggregate, not less than 25 percent of the stock of the Association, may call a special meeting of shareholders at any time. Unless otherwise provided by the Bylaws or the laws of the United States, or waived by shareholders, a notice of the time, place, and purpose of every annual and special meeting of the shareholders shall be given by first-class mail, postage prepaid, mailed at least 10, and no more than 60, days prior to the date of the meeting to each shareholder of record at his/her address as shown upon the books of the Association. Unless otherwise provided by the Bylaws, any action requiring approval of shareholders must be effected at a duly called annual or special meeting.

**TENTH.** These Articles of Association may be amended at any regular or special meeting of the shareholders by the affirmative vote of the holders of a majority of the stock of the Association, unless the vote of the holders of a greater amount of stock is required by law, and in that case by the vote of the holders of such greater amount; provided, that the scope of the Association's activities and services may not be expanded without the prior written approval of the Comptroller of the Currency. The Association's board of directors may propose one or more amendments to the Articles of Association for submission to the shareholders.

In witness whereof, we have hereunto set our hands this 11<sup>th</sup> of June, 1997.

/s/ Jeffrey T. Grubb

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Jeffrey T. Grubb

/s/ Robert D. Sznawajs

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Robert D. Sznawajs

/s/ Dwight V. Board

\_\_\_\_\_  
Dwight V. Board

/s/ P.K. Chatterjee

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P. K. Chatterjee

/s/ Robert Lane

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Robert Lane

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**CERTIFICATE OF CORPORATE EXISTENCE AND FIDUCIARY POWERS**

I, Michael J. Hsu, Acting Comptroller of the Currency, do hereby certify that:

1. The Comptroller of the Currency, pursuant to Revised Statutes 324, et seq, as amended, and 12 USC 1, et seq, as amended, has possession, custody, and control of all records pertaining to the chartering, regulation, and supervision of all national banking associations.
2. "U.S. Bank Trust Company, National Association," Portland, Oregon (Charter No. 23412), is a national banking association formed under the laws of the United States and is authorized thereunder to transact the business of banking and exercise fiduciary powers on the date of this certificate.

IN TESTIMONY WHEREOF, today, January 6, 2023, I have hereunto subscribed my name and caused my seal of office to be affixed to these presents at the U.S. Department of the Treasury, in the City of Washington, District of Columbia.

A handwritten signature in black ink, appearing to read "Michael J. Hsu".

Acting Comptroller of the Currency



**Exhibit 3**

**U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION**

**AMENDED AND RESTATED BYLAWS**

**ARTICLE I**

**Meetings of Shareholders**

Section 1.1. Annual Meeting. The annual meeting of the shareholders, for the election of directors and the transaction of any other proper business, shall be held at a time and place as the Chairman or President may designate. Notice of such meeting shall be given not less than ten (10) days or more than sixty (60) days prior to the date thereof, to each shareholder of the Association, unless the Office of the Comptroller of the Currency (the "OCC") determines that an emergency circumstance exists. In accordance with applicable law, the sole shareholder of the Association is permitted to waive notice of the meeting. If, for any reason, an election of directors is not made on the designated day, the election shall be held on some subsequent day, as soon thereafter as practicable, with prior notice thereof. Failure to hold an annual meeting as required by these Bylaws shall not affect the validity of any corporate action or work a forfeiture or dissolution of the Association.

Section 1.2. Special Meetings. Except as otherwise specially provided by law, special meetings of the shareholders may be called for any purpose, at any time by a majority of the board of directors (the "Board"), or by any shareholder or group of shareholders owning at least ten percent of the outstanding stock.

Every such special meeting, unless otherwise provided by law, shall be called upon not less than ten (10) days nor more than sixty (60) days prior notice stating the purpose of the meeting.

Section 1.3. Nominations for Directors. Nominations for election to the Board may be made by the Board or by any shareholder.

Section 1.4. Proxies. Shareholders may vote at any meeting of the shareholders by proxies duly authorized in writing. Proxies shall be valid only for one meeting and any adjournments of such meeting and shall be filed with the records of the meeting.

Section 1.5. Record Date. The record date for determining shareholders entitled to notice and to vote at any meeting will be thirty days before the date of such meeting, unless otherwise determined by the Board.

Section 1.6. Quorum and Voting. A majority of the outstanding capital stock, represented in person or by proxy, shall constitute a quorum at any meeting of shareholders, unless otherwise provided by law, but less than a quorum may adjourn any meeting, from time to time, and the meeting may be held as adjourned without further notice. A majority of the votes cast shall decide every question or matter submitted to the shareholders at any meeting, unless otherwise provided by law or by the Articles of Association.

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Section 1.7. Inspectors. The Board may, and in the event of its failure so to do, the Chairman of the Board may appoint Inspectors of Election who shall determine the presence of quorum, the validity of proxies, and the results of all elections and all other matters voted upon by shareholders at all annual and special meetings of shareholders.

Section 1.8. Waiver and Consent. The shareholders may act without notice or a meeting by a unanimous written consent by all shareholders.

Section 1.9. Remote Meetings. The Board shall have the right to determine that a shareholder meeting not be held at a place, but instead be held solely by means of remote communication in the manner and to the extent permitted by the General Corporation Law of the State of Delaware.

## ARTICLE II Directors

Section 2.1. Board of Directors. The Board shall have the power to manage and administer the business and affairs of the Association. Except as expressly limited by law, all corporate powers of the Association shall be vested in and may be exercised by the Board.

Section 2.2. Term of Office. The directors of this Association shall hold office for one year and until their successors are duly elected and qualified, or until their earlier resignation or removal.

Section 2.3. Powers. In addition to the foregoing, the Board shall have and may exercise all of the powers granted to or conferred upon it by the Articles of Association, the Bylaws and by law.

Section 2.4. Number. As provided in the Articles of Association, the Board of this Association shall consist of no less than five nor more than twenty-five members, unless the OCC has exempted the Association from the twenty-five- member limit. The Board shall consist of a number of members to be fixed and determined from time to time by resolution of the Board or the shareholders at any meeting thereof, in accordance with the Articles of Association. Between meetings of the shareholders held for the purpose of electing directors, the Board by a majority vote of the full Board may increase the size of the Board but not to more than a total of twenty-five directors, and fill any vacancy so created in the Board; provided that the Board may increase the number of directors only by up to two directors, when the number of directors last elected by shareholders was fifteen or fewer, and by up to four directors, when the number of directors last elected by shareholders was sixteen or more. Each director shall own a qualifying equity interest in the Association or a company that has control of the Association in each case as required by applicable law. Each director shall own such qualifying equity interest in his or her own right and meet any minimum threshold ownership required by applicable law.

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Section 2.5. Organization Meeting. The newly elected Board shall meet for the purpose of organizing the new Board and electing and appointing such officers of the Association as may be appropriate. Such meeting shall be held on the day of the election or as soon thereafter as practicable, and, in any event, within thirty days thereafter, at such time and place as the Chairman or President may designate. If, at the time fixed for such meeting, there shall not be a quorum present, the directors present may adjourn the meeting until a quorum is obtained.

Section 2.6. Regular Meetings. The regular meetings of the Board shall be held, without notice, as the Chairman or President may designate and deem suitable.

Section 2.7. Special Meetings. Special meetings of the Board may be called at any time, at any place and for any purpose by the Chairman of the Board or the President of the Association, or upon the request of a majority of the entire Board. Notice of every special meeting of the Board shall be given to the directors at their usual places of business, or at such other addresses as shall have been furnished by them for the purpose. Such notice shall be given at least twelve hours (three hours if meeting is to be conducted by conference telephone) before the meeting by telephone or by being personally delivered, mailed, or electronically delivered. Such notice need not include a statement of the business to be transacted at, or the purpose of, any such meeting.

Section 2.8. Quorum and Necessary Vote. A majority of the directors shall constitute a quorum at any meeting of the Board, except when otherwise provided by law; but less than a quorum may adjourn any meeting, from time to time, and the meeting may be held as adjourned without further notice. Unless otherwise provided by law or the Articles or Bylaws of this Association, once a quorum is established, any act by a majority of those directors present and voting shall be the act of the Board.

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Section 2.9. Written Consent. Except as otherwise required by applicable laws and regulations, the Board may act without a meeting by a unanimous written consent by all directors, to be filed with the Secretary of the Association as part of the corporate records.

Section 2.10. Remote Meetings. Members of the Board, or of any committee thereof, may participate in a meeting of such Board or committee by means of conference telephone, video or similar communications equipment by means of which all persons participating in the meeting can hear each other and such participation shall constitute presence in person at such meeting.

Section 2.11. Vacancies. When any vacancy occurs among the directors, the remaining members of the Board may appoint a director to fill such vacancy at any regular meeting of the Board, or at a special meeting called for that purpose.

ARTICLE III  
Committees

Section 3.1. Advisory Board of Directors. The Board may appoint persons, who need not be directors, to serve as advisory directors on an advisory board of directors established with respect to the business affairs of either this Association alone or the business affairs of a group of affiliated organizations of which this Association is one. Advisory directors shall have such powers and duties as may be determined by the Board, provided, that the Board's responsibility for the business and affairs of this Association shall in no respect be delegated or diminished.

Section 3.2. Trust Audit Committee. At least once during each calendar year, the Association shall arrange for a suitable audit (by internal or external auditors) of all significant fiduciary activities under the direction of its trust audit committee, a function that will be fulfilled by the Audit Committee of the financial holding company that is the ultimate parent of this Association. The Association shall note the results of the audit (including significant actions taken as a result of the audit) in the minutes of the Board. In lieu of annual audits, the Association may adopt a continuous audit system in accordance with 12 C.F.R. § 9.9(b).

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The Audit Committee of the financial holding company that is the ultimate parent of this Association, fulfilling the function of the trust audit committee:

- (1) Must not include any officers of the Association or an affiliate who participate significantly in the administration of the Association's fiduciary activities; and
- (2) Must consist of a majority of members who are not also members of any committee to which the Board has delegated power to manage and control the fiduciary activities of the Association.

Section 3.3. Executive Committee. The Board may appoint an Executive Committee which shall consist of at least three directors and which shall have, and may exercise, to the extent permitted by applicable law, all the powers of the Board between meetings of the Board or otherwise when the Board is not meeting.

Section 3.4. Trust Management Committee. The Board of this Association shall appoint a Trust Management Committee to provide oversight of the fiduciary activities of the Association. The Trust Management Committee shall determine policies governing fiduciary activities. The Trust Management Committee or such sub-committees, officers or others as may be duly designated by the Trust Management Committee shall oversee the processes related to fiduciary activities to assure conformity with fiduciary policies it establishes, including ratifying the acceptance and the closing out or relinquishment of all trusts. The Trust Management Committee will provide regular reports of its activities to the Board.

Section 3.5. Other Committees. The Board may appoint, from time to time, committees of one or more persons who need not be directors, for such purposes and with such powers as the Board may determine; however, the Board will not delegate to any committee any powers or responsibilities that it is prohibited from delegating under any law or regulation. In addition, either the Chairman or the President may appoint, from time to time, committees of one or more officers, employees, agents or other persons, for such purposes and with such powers as either the Chairman or the President deems appropriate and proper. Whether appointed by the Board, the Chairman, or the President, any such committee shall at all times be subject to the direction and control of the Board.

Section 3.6. Meetings, Minutes and Rules. An advisory board of directors and/or committee shall meet as necessary in consideration of the purpose of the advisory board of directors or committee, and shall maintain minutes in sufficient detail to indicate actions taken or recommendations made; unless required by the members, discussions, votes or other specific details need not be reported. An advisory board of directors or a committee may, in consideration of its purpose, adopt its own rules for the exercise of any of its functions or authority.

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ARTICLE IV  
Officers

Section 4.1. Chairman of the Board. The Board may appoint one of its members to be Chairman of the Board to serve at the pleasure of the Board. The Chairman shall supervise the carrying out of the policies adopted or approved by the Board; shall have general executive powers, as well as the specific powers conferred by these Bylaws; and shall also have and may exercise such powers and duties as from time to time may be conferred upon or assigned by the Board.

Section 4.2. President. The Board may appoint one of its members to be President of the Association. In the absence of the Chairman, the President shall preside at any meeting of the Board. The President shall have general executive powers, and shall have and may exercise any and all other powers and duties pertaining by law, regulation or practice, to the office of President, or imposed by these Bylaws. The President shall also have and may exercise such powers and duties as from time to time may be conferred or assigned by the Board.

Section 4.3. Vice President. The Board may appoint one or more Vice Presidents who shall have such powers and duties as may be assigned by the Board and to perform the duties of the President on those occasions when the President is absent, including presiding at any meeting of the Board in the absence of both the Chairman and President.

Section 4.4. Secretary. The Board shall appoint a Secretary, or other designated officer who shall be Secretary of the Board and of the Association, and shall keep accurate minutes of all meetings. The Secretary shall attend to the giving of all notices required by these Bylaws to be given; shall be custodian of the corporate seal, records, documents and papers of the Association; shall provide for the keeping of proper records of all transactions of the Association; shall, upon request, authenticate any records of the Association; shall have and may exercise any and all other powers and duties pertaining by law, regulation or practice, to the Secretary, or imposed by these Bylaws; and shall also perform such other duties as may be assigned from time to time by the Board. The Board may appoint one or more Assistant Secretaries with such powers and duties as the Board, the President or the Secretary shall from time to time determine.

Section 4.5. Other Officers. The Board may appoint, and may authorize the Chairman, the President or any other officer to appoint, any officer as from time to time may appear to the Board, the Chairman, the President or such other officer to be required or desirable to transact the business of the Association. Such officers shall exercise such powers and perform such duties as pertain to their several offices, or as may be conferred upon or assigned to them by these Bylaws, the Board, the Chairman, the President or such other authorized officer. Any person may hold two offices.

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Section 4.6. Tenure of Office. The Chairman or the President and all other officers shall hold office until their respective successors are elected and qualified or until their earlier death, resignation, retirement, disqualification or removal from office, subject to the right of the Board or authorized officer to discharge any officer at any time.

ARTICLE V  
Stock

Section 5.1. The Board may authorize the issuance of stock either in certificated or in uncertificated form. Certificates for shares of stock shall be in such form as the Board may from time to time prescribe. If the Board issues certificated stock, the certificate shall be signed by the President, Secretary or any other such officer as the Board so determines. Shares of stock shall be transferable on the books of the Association, and a transfer book shall be kept in which all transfers of stock shall be recorded. Every person becoming a shareholder by such transfer shall, in proportion to such person's shares, succeed to all rights of the prior holder of such shares. Each certificate of stock shall recite on its face that the stock represented thereby is transferable only upon the books of the Association properly endorsed. The Board may impose conditions upon the transfer of the stock reasonably calculated to simplify the work of the Association for stock transfers, voting at shareholder meetings, and related matters, and to protect it against fraudulent transfers.

ARTICLE VI  
Corporate Seal

Section 6.1. The Association shall have no corporate seal; provided, however, that if the use of a seal is required by, or is otherwise convenient or advisable pursuant to, the laws or regulations of any jurisdiction, the following seal may be used, and the Chairman, the President, the Secretary and any Assistant Secretary shall have the authority to affix such seal:

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ARTICLE VII  
Miscellaneous Provisions

Section 7.1. Execution of Instruments. All agreements, checks, drafts, orders, indentures, notes, mortgages, deeds, conveyances, transfers, endorsements, assignments, certificates, declarations, receipts, discharges, releases, satisfactions, settlements, petitions, schedules, accounts, affidavits, bonds, undertakings, guarantees, proxies and other instruments or documents may be signed, countersigned, executed, acknowledged, endorsed, verified, delivered or accepted on behalf of the Association, whether in a fiduciary capacity or otherwise, by any officer of the Association, or such employee or agent as may be designated from time to time by the Board by resolution, or by the Chairman or the President by written instrument, which resolution or instrument shall be certified as in effect by the Secretary or an Assistant Secretary of the Association. The provisions of this section are supplementary to any other provision of the Articles of Association or Bylaws.

Section 7.2. Records. The Articles of Association, the Bylaws as revised or amended from time to time and the proceedings of all meetings of the shareholders, the Board, and standing committees of the Board, shall be recorded in appropriate minute books provided for the purpose. The minutes of each meeting shall be signed by the Secretary, or other officer appointed to act as Secretary of the meeting.

Section 7.3. Trust Files. There shall be maintained in the Association files all fiduciary records necessary to assure that its fiduciary responsibilities have been properly undertaken and discharged.

Section 7.4. Trust Investments. Funds held in a fiduciary capacity shall be invested according to the instrument establishing the fiduciary relationship and according to law. Where such instrument does not specify the character and class of investments to be made and does not vest in the Association a discretion in the matter, funds held pursuant to such instrument shall be invested in investments in which corporate fiduciaries may invest under law.

Section 7.5. Notice. Whenever notice is required by the Articles of Association, the Bylaws or law, such notice shall be by mail, postage prepaid, e-mail, in person, or by any other means by which such notice can reasonably be expected to be received, using the address of the person to receive such notice, or such other personal data, as may appear on the records of the Association. Except where specified otherwise in these Bylaws, prior notice shall be proper if given not more than 30 days nor less than 10 days prior to the event for which notice is given.

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ARTICLE VIII  
Indemnification

Section 8.1. The Association shall indemnify such persons for such liabilities in such manner under such circumstances and to such extent as permitted by Section 145 of the Delaware General Corporation Law, as now enacted or hereafter amended. The Board may authorize the purchase and maintenance of insurance and/or the execution of individual agreements for the purpose of such indemnification, and the Association shall advance all reasonable costs and expenses (including attorneys' fees) incurred in defending any action, suit or proceeding to all persons entitled to indemnification under this Section 8.1. Such insurance shall be consistent with the requirements of 12 C.F.R. § 7.2014 and shall exclude coverage of liability for a formal order assessing civil money penalties against an institution-affiliated party, as defined at 12 U.S.C. § 1813(u).

Section 8.2. Notwithstanding Section 8.1, however, (a) any indemnification payments to an institution-affiliated party, as defined at 12 U.S.C. § 1813(u), for an administrative proceeding or civil action initiated by a federal banking agency, shall be reasonable and consistent with the requirements of 12 U.S.C. § 1828(k) and the implementing regulations thereunder; and (b) any indemnification payments and advancement of costs and expenses to an institution-affiliated party, as defined at 12 U.S.C. § 1813(u), in cases involving an administrative proceeding or civil action not initiated by a federal banking agency, shall be in accordance with Delaware General Corporation Law and consistent with safe and sound banking practices.

ARTICLE IX  
Bylaws: Interpretation and Amendment

Section 9.1. These Bylaws shall be interpreted in accordance with and subject to appropriate provisions of law, and may be added to, altered, amended, or repealed, at any regular or special meeting of the Board.

Section 9.2. A copy of the Bylaws and all amendments shall at all times be kept in a convenient place at the principal office of the Association, and shall be open for inspection to all shareholders during Association hours.

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ARTICLE X  
Miscellaneous Provisions

Section 10.1. Fiscal Year. The fiscal year of the Association shall begin on the first day of January in each year and shall end on the thirty-first day of December following.

Section 10.2. Governing Law. This Association designates the Delaware General Corporation Law, as amended from time to time, as the governing law for its corporate governance procedures, to the extent not inconsistent with Federal banking statutes and regulations or bank safety and soundness.

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(February 8, 2021)

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**Exhibit 5**

**CONSENT**

In accordance with Section 321(b) of the Trust Indenture Act of 1939, the undersigned, U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION hereby consents that reports of examination of the undersigned by Federal, State, Territorial or District authorities may be furnished by such authorities to the Securities and Exchange Commission upon its request therefor.

Dated: February 21, 2023

By: /s/ Wally Jones  
Wally Jones  
Vice President

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**Exhibit 6**  
**U.S. Bank Trust Company, National Association**  
**Statement of Financial Condition**  
**as of 12/31/2022**

(\$000's)

	12/31/2022
<b>Assets</b>	
Cash and Balances Due From Depository Institutions	\$ 741,758
Securities	4,322
Federal Funds	0
Loans & Lease Financing Receivables	0
Fixed Assets	2,186
Intangible Assets	581,108
Other Assets	163,734
<b>Total Assets</b>	<b>\$ 1,493,108</b>
<b>Liabilities</b>	
Deposits	\$ 0
Fed Funds	0
Treasury Demand Notes	0
Trading Liabilities	0
Other Borrowed Money	0
Acceptances	0
Subordinated Notes and Debentures	0
Other Liabilities	107,167
<b>Total Liabilities</b>	<b>\$ 107,167</b>
<b>Equity</b>	
Common and Preferred Stock	200
Surplus	1,171,635
Undivided Profits	214,106
Minority Interest in Subsidiaries	0
<b>Total Equity Capital</b>	<b>\$ 1,385,941</b>
<b>Total Liabilities and Equity Capital</b>	<b>\$ 1,493,108</b>

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**Calculation of Filing Fee Tables**  
Form S-3  
(Form Type)  
CrossFirst Bankshares, Inc.  
(Exact Name of Registrant as Specified in its Charter)  
Table 1: Newly Registered Securities

	Security Type	Security Class Title	Fee Calculation Rule	Amount Registered	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
<b>Newly Registered Securities</b>								
Fees to be Paid	Equity	Common Stock, \$0.01 par value per share	Rule 457(o)	(1)	\$(1)	\$—	—	\$—
	Equity	Preferred Stock, \$0.01 par value per share	Rule 457(o)	(1)	(1)	—	—	—
	Equity	Depositary Shares	Rule 457(o)	(1)	(1)	—	—	—
	Debt	Debt Securities	Rule 457(o)	(1)	(1)	—	—	—
	Other	Warrants	Rule 457(o)	(1)	(1)	—	—	—
	Other	Purchase Contracts	Rule 457(o)	(1)	(1)	—	—	—
	Other	Purchase Units	Rule 457(o)	(1)	(1)	—	—	—
	Other	Subscription Rights	Rule 457(o)	(1)	(1)	—	—	—
	Other	Units	Rule 457(o)	(1)	(1)	—	—	—
		Unallocated (Universal) Shelf	—	Rule 457(o)	\$250,000,000	—	\$250,000,000 <sup>(2)</sup>	0.00011020
	<b>Total Offering Amounts</b>					\$250,000,000 <sup>(2)</sup>		\$27,550
	<b>Total Fees Previously Paid</b>							\$—
	<b>Total Fee Offsets</b>							\$—
	<b>Net Fee Due</b>							\$27,550

- (1) An indeterminate number or aggregate principal amount, as applicable, of securities of each identified class is being registered as may from time to time be offered on a primary basis at indeterminate prices, including an indeterminate number or amount of securities that may be issued upon the exercise, settlement, exchange or conversion of securities offered hereunder. Pursuant to Rule 416 under the Securities Act of 1933, as amended, or the Securities Act, this registration statement shall also cover any additional securities of the registrant that become issuable by reason of any splits, dividends or similar transactions or anti-dilution adjustments. Any securities registered hereunder may be sold separately or in combination with other securities registered hereunder. Separate consideration may or may not be received for securities that are issuable upon conversion of, or in exchange for, or upon exercise of, convertible or exchangeable securities. Each depositary share will be evidenced by depositary receipts issued pursuant to a deposit agreement. In the event the registrant elects to offer to the public whole or fractional interests in shares of preferred stock hereunder, depositary shares will be distributed to those persons purchasing such interests and such shares of preferred stock will be issued to the depositary under the deposit agreement. This registration statement also covers securities registered hereunder that may be offered or sold under delayed delivery contracts pursuant to which the counterparty may be required to purchase such securities, as well as such contracts themselves. Such contracts would be issued with the specific securities to which they relate.
  - (2) Estimated solely for the purpose of calculating the registration fee. Subject to Rule 462(b) under the Securities Act, the aggregate initial offering price of all securities issued by the registrant pursuant to this registration statement will not exceed \$250,000,000. The proposed maximum aggregate offering price per class of security will be determined from time to time by the registrant in connection with the issuance by the registrant of the securities registered hereunder and is not specified as to each class of security pursuant to pursuant to Item 16(b) of Form S-3 under the Securities Act.
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