

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549

FORM 8-K

CURRENT REPORT  
Pursuant to Section 13 or 15(d) of  
The Securities Exchange Act of 1934

Date of Earliest Event Reported: August 5, 2009

**CAPITAL ONE FINANCIAL CORPORATION**

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction  
of incorporation)

1-13300  
(Commission File  
Number)

54-1719854  
(IRS Employer  
Identification No.)

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

22102  
(Zip Code)

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

(Former name or former address, if changed since last report)

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

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

**Item 8.01 Other Events.**

On August 5, 2009, Capital One Financial Corporation (“Capital One” or the “Company”), and Capital One Capital V, a statutory trust formed under the laws of the State of Delaware (the “Trust”), closed the public offering of \$1,000,000,000 aggregate liquidation amount of the Trust’s 10.25% Cumulative Trust Preferred Securities (the “Trust Preferred Securities”), representing preferred beneficial interests in the Trust, pursuant to an Underwriting Agreement dated July 29, 2009, among the Company, the Trust and J.P. Morgan Securities Inc., Banc of America Securities LLC and Morgan Stanley & Co. Incorporated as representatives (the “Representatives”) of the underwriters named in Schedule I thereto (collectively, the “Underwriters”). The Trust Preferred Securities are guaranteed on a subordinated basis by the Company pursuant to a Guarantee Agreement (the “Guarantee”) between the Company and The Bank of New York Mellon, as Guarantee Trustee. The proceeds from the sale of the Trust Preferred Securities, together with the proceeds from the sale by the Trust of its common securities, were invested by the Trust in 10.25% Junior Subordinated Debt Securities due 2039 (the “Junior Subordinated Debt Securities”), issued pursuant to a Junior Subordinated Indenture dated June 6, 2006, as supplemented by the Fourth Supplemental Indenture dated August 5, 2009 (the “Indenture”), between the Company and The Bank of New York Mellon, as Indenture Trustee. The Trust Preferred Securities, the Junior Subordinated Debt Securities and the Guarantee have been registered under the Securities Act of 1933, as amended, by a registration statement on Form S-3 (File No. 333-159085).

On August 5, 2009, in connection with the issuance of the Trust Preferred Securities, Gibson, Dunn & Crutcher LLP rendered an opinion regarding certain tax matters. A copy of that opinion is attached as Exhibit 8.1 to this report.

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

**Item 9.01 Financial Statements and Exhibits.**

## (d) Exhibits

<u>Exhibit</u>	<u>Description</u>
1.1	Underwriting Agreement dated July 29, 2009, among Capital One Financial Corporation, Capital One Capital V and J.P. Morgan Securities Inc., Banc of America Securities LLC and Morgan Stanley & Co. Incorporated, as Representatives of the Underwriters
4.1	Indenture dated June 6, 2006 between Capital One Financial Corporation and The Bank of New York Mellon as Indenture Trustee (incorporated herein by reference to Exhibit 4.1 of the Form 8-K filed on June 12, 2006)
4.2	Fourth Supplemental Indenture dated August 5, 2009 between Capital One Financial Corporation and The Bank of New York Mellon as Indenture Trustee
4.3	Amended and Restated Declaration of Trust of Capital One Capital V dated August 5, 2009 between Capital One Financial Corporation as Sponsor, The Bank of New York Mellon Trust Company, N.A. as Institutional Trustee, BNY Mellon Trust of Delaware as Delaware Trustee and the Administrative Trustees named therein
4.4	Guarantee Agreement dated August 5, 2009 between Capital One Financial Corporation and The Bank of New York Mellon as Guarantee Trustee
4.5	Specimen Trust Preferred Security Certificate (included as part of Exhibit 4.3)
4.6	Specimen Junior Subordinated Debt Security (included as part of Exhibit 4.2)
5.1(a)	Opinion of Gibson, Dunn & Crutcher LLP
5.1(b)	Opinion of Richards, Layton & Finger, P.A.
8.1	Opinion of Gibson, Dunn & Crutcher LLP dated August 5, 2009, regarding certain tax matters

**SIGNATURES**

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

**CAPITAL ONE FINANCIAL CORPORATION**

Dated: August 5, 2009

By: /s/ Gary L. Perlin  
Gary L. Perlin  
Chief Financial Officer

## EXHIBIT INDEX

<u>Exhibit</u>	<u>Description</u>
1.1	Underwriting Agreement dated July 29, 2009, among Capital One Financial Corporation, Capital One Capital V and J.P. Morgan Securities Inc., Banc of America Securities LLC and Morgan Stanley & Co. Incorporated, as Representatives of the Underwriters
4.1	Indenture dated June 6, 2006 between Capital One Financial Corporation and The Bank of New York Mellon as Indenture Trustee (incorporated herein by reference to Exhibit 4.1 of the Form 8-K filed on June 12, 2006)
4.2	Fourth Supplemental Indenture dated August 5, 2009 between Capital One Financial Corporation and The Bank of New York Mellon as Indenture Trustee
4.3	Amended and Restated Declaration of Trust of Capital One Capital V dated August 5, 2009 between Capital One Financial Corporation as Sponsor, The Bank of New York Mellon Trust Company, N.A. as Institutional Trustee, BNY Mellon Trust of Delaware as Delaware Trustee and the Administrative Trustees named therein
4.4	Guarantee Agreement dated August 5, 2009 between Capital One Financial Corporation and The Bank of New York Mellon as Guarantee Trustee
4.5	Specimen Trust Preferred Security Certificate (included as part of Exhibit 4.3)
4.6	Specimen Junior Subordinated Debt Security (included as part of Exhibit 4.2)
5.1(a)	Opinion of Gibson, Dunn & Crutcher LLP
5.1(b)	Opinion of Richards, Layton & Finger, P.A.
8.1	Opinion of Gibson, Dunn & Crutcher LLP dated August 5, 2009, regarding certain tax matters

1,000,000

**CAPITAL ONE CAPITAL V**

**10.25% Cumulative Trust Preferred Securities  
(Liquidation Amount of \$1,000 per Security)**

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

**CAPITAL ONE FINANCIAL CORPORATION**

**UNDERWRITING AGREEMENT**

---

**July 29, 2009**

J.P. Morgan Securities Inc.  
270 Park Avenue  
New York, New York 10017

Banc of America Securities LLC  
One Bryant Park  
New York, New York 10036

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

As Representatives of the several  
Underwriters named in Schedule I hereto,

Dear Sirs:

Capital One Capital V (the "Trust"), a statutory trust created under the Statutory Trust Act (the "Delaware Act") of the State of Delaware (Chapter 38, Title 12, of the Delaware Code, 12 Del. C. §3801 et seq.), a subsidiary of Capital One Financial Corporation, a Delaware corporation (the "Company" and, together with the Trust, the "Offerors"), proposes to issue and sell to the several underwriters named in Schedule I hereto (the "Underwriters"), for which you are acting as representatives (the "Representatives"), the aggregate number of 10.25% Cumulative Trust Preferred Securities (liquidation amount of \$1,000 per security) issued by the Trust (the "Securities") as set forth in Schedule I attached hereto.

The Securities are to be issued under an amended and restated declaration of trust (the "Declaration"), to be dated as of August 5, 2009, among the Company, as sponsor, The Bank of New York Mellon Trust Company, N.A., as institutional trustee (the "Institutional Trustee"), BNY Mellon Trust of Delaware, as Delaware trustee (the "Delaware Trustee"), and two individuals who are officers or employees of the Company, as administrative trustees (the "Administrative Trustees" and, together with the Institutional Trustee and the Delaware Trustee, the "Trustees"), and the holders from time to time of undivided beneficial interests in the assets of the Trust. The Securities will be guaranteed by the Company on a junior subordinated basis with respect to distributions and amounts payable upon liquidation or redemption (the "Guarantee"), to the extent described in the Prospectus (as defined below) pursuant to a guarantee agreement, to be dated as of August 5, 2009 (the "Guarantee Agreement"), between the Company and The Bank of New York Mellon Corporation, as guarantee trustee (the "Guarantee Trustee").

The Trust will use the proceeds from the sale of the Securities together with the proceeds from the sale of its common securities (the "Common Securities") to the Company to purchase \$1,000,000,000 aggregate principal amount of 10.25% Junior Subordinated Notes due 2039 (the "Junior Subordinated Debt Securities") issued by the Company pursuant to the provisions of a junior subordinated indenture dated as of June 6, 2006, as supplemented by a fourth supplemental indenture to be dated as of August 5, 2009 (the "Indenture") between the Company and The Bank of New York Mellon Corporation, as trustee (the "Indenture Trustee").

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

1. Registration Statement and Prospectus. The Offerors have prepared and filed with the Securities and Exchange Commission (the "Commission") a registration statement on Form S-3 (File No. 333-159085) under the Securities Act of 1933, as amended (the "Securities Act") in respect of, among other securities, the Securities, the Junior Subordinated Debt Securities and the Guarantee (as amended through the date of this Agreement, being herein referred to as the "Registration Statement"). Such Registration Statement is automatically effective upon filing with the Commission. The Registration Statement contains a base prospectus in the form in which it has most recently been filed with the Commission on or prior to the date of this Agreement (the "Base Prospectus"), to be used in connection with the public offering and sale of the Securities. Any preliminary prospectus supplement to the Base Prospectus that describes the Securities and the offering thereof and is used prior to filing of the Prospectus is called, together with the Base Prospectus, a "preliminary prospectus." The term "Prospectus" shall mean the final prospectus supplement relating to the Securities, together with the Base Prospectus, that is first filed pursuant to Rule 424(b) under the Securities Act after the date and time that this Agreement is executed and delivered by the parties hereto but shall not include any free writing prospectus (as such term is used in Rule 405 under the Securities Act). Any Prospectus shall be deemed to refer to and

include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the Securities Act; any reference to any amendment or supplement to any preliminary prospectus or the Prospectus shall be deemed to refer to and include any documents filed after the date of such preliminary prospectus or the Prospectus, as the case may be, under the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (collectively, the “Exchange Act”), and incorporated by reference in such preliminary prospectus or such Prospectus, as the case may be. The Company and the Trust also have prepared and filed (or will file) with the Commission the Issuer Free Writing Prospectuses (as defined below) set forth on Schedule II hereto. All references in this Agreement to the Registration Statement, a preliminary prospectus, the Prospectus, or any amendments or supplements to any of the foregoing, shall include any copy thereof filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval System (“EDGAR”).

2. Agreements to Sell and Purchase. On the basis of the representations and warranties contained in this Agreement, and subject to its terms and conditions, the Trust agrees to issue and sell, and each Underwriter agrees, severally and not jointly, to purchase from the Trust, the number of Securities set forth opposite the name of such Underwriter in Schedule I hereto (or such number increased as set forth in Section 11 hereto). The purchase price (“Purchase Price”) for each Security to be paid by the several Underwriters shall be the initial public offering price per Security of \$988.46. As compensation to the Underwriters for their commitments hereunder and in view of the fact that the proceeds of the sale of the Securities by the Trust will be used to purchase the Junior Subordinated Debt Securities of the Company, the Company hereby agrees to pay on the Closing Date to the Underwriters, a commission of \$12.50 per Security.

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

4. Delivery and Payment. The Trust will deliver, or cause to be delivered, the Securities to the Representatives for the account of each Underwriter against payment by or on behalf of such Underwriter of the Purchase Price by wire transfer of Federal (same-day) funds to the account specified by the Trust to the Representatives at least twenty-four hours in advance, by depositing certificates representing the Securities with a custodian (the “Custodian”) for The Depository Trust Company (“DTC”) and registered in the name of Cede & Co., or such other nominee as DTC may designate, and shall cause DTC to credit the Securities to the accounts of the Representatives at DTC. The time and date of such delivery and payment, with respect to the Underwritten Securities, shall be 10:00 A.M., New York City time on the fifth business day, unless otherwise permitted by the Commission pursuant to Rule 15c6-1 of the Exchange Act (the “Closing Date”), following the date of the Prospectus or such other time and date as the Representatives and the Trust may agree upon in writing.

Certificates for the Securities shall be registered in such names and issued in such denominations as you shall request in writing not later than two full business days prior to the Closing Date. Such certificates shall be made available to you for inspection not later than 9:30 A.M., New York City time, on the business day next preceding the Closing Date.

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

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

(b) During the period beginning at the Time of Sale (as defined below) and ending on the later of the Closing Date or such date as in the opinion of counsel for the Underwriters, the Prospectus is no longer required by law to be delivered in connection with sales by an Underwriter or a dealer, including in circumstances where such requirement may be satisfied pursuant to Rule 172 under the Securities Act (the "Prospectus Delivery Period"), prior to amending or supplementing the Registration Statement, the Disclosure Package (as defined below) or the Prospectus (including any amendment or supplement through incorporation by reference of any report filed under the Exchange Act), the Company shall furnish to the Representatives for review a copy of each such proposed amendment or supplement.

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

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

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

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

any such post-effective amendment to the Registration Statement to become promptly effective. If at any time the Commission shall issue any stop order suspending the effectiveness of the Registration Statement, the Offerors will use their reasonable best efforts to obtain the withdrawal or lifting of such order at the earliest possible time.

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

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

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

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

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

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

(m) During the period beginning on the date hereof and continuing to and including the Closing Date, the Company will not offer, sell, contract to sell or otherwise dispose of any debt securities of the Company or warrants to purchase debt securities of the Company substantially similar to the Securities; provided, however, the Company may, at any time, offer or sell or announce the offering of commercial paper issued in the ordinary course of business.

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

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

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

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

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

(b) (i) At the respective times the Registration Statement and any post-effective amendment thereto became or becomes effective prior to the Closing Date, neither the Registration Statement nor such amendment included or will include an untrue statement of a material fact or omitted or will omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) the Registration Statement and the Prospectus comply and, as amended or supplemented, if applicable, as of the date such amendment becomes effective or such supplement is filed with the Commission, as the case may be, will comply in all material respects with the Securities Act and the Trust Indenture Act, (iii) the Prospectus does not contain and, as amended or supplemented, if applicable, as of the date such amendment becomes effective or such supplement is filed with the Commission, as the case may be, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, except that the representations and warranties set forth in this paragraph (b) do not apply to statements or omissions in the Registration Statement or the Prospectus based upon information relating to any Underwriter furnished to the Offerors in writing by such Underwriter expressly for use therein, it being understood and agreed that the only such information furnished by or on behalf of any Underwriter consists of the information described as such in Section 8 hereof, and (iv) the documents incorporated by reference in the Prospectus pursuant to Item 12 of Form S-3 under the Securities Act, at the time they were or hereafter are filed with the Commission prior to the Closing Date, complied and will comply in all material respects with the requirements of the Exchange Act, and, when read together and with the other information in the Prospectus, as of the date of the Prospectus and at all times subsequent thereto up to the Closing Date, did not and will not contain an untrue statement of material fact or did not and will not omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(c) The term "Disclosure Package" shall mean (i) the Base Prospectus, including the preliminary prospectus supplement dated July 29, 2009, as amended or supplemented at the Time of Sale (as defined below), and (ii) the Issuer Free Writing Prospectuses, if any, identified on Schedule II hereto. As of the Time of Sale, the Disclosure Package did not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from the Disclosure Package based upon and in conformity with written information furnished to the Offerors by any Underwriter through the Representatives specifically for use therein, it being understood and agreed that the only such information furnished by or on behalf of any Underwriter consists of the information described as such in Section 8 hereof. As used in this paragraph and elsewhere in this Agreement "Time of Sale" shall mean 5:00 p.m. on July 29, 2009.

(d) Each Issuer Free Writing Prospectus does not include any information that conflicts with the information contained in the Registration Statement as modified or superseded as of the date hereof, including any document incorporated by reference therein that has not been superseded or modified. The foregoing sentence does not apply

to statements in or omissions from any Issuer Free Writing Prospectus based upon and in conformity with written information furnished to the Offerors by any Underwriter through the Representatives specifically for use therein, it being understood and agreed that the only such information furnished by or on behalf of any Underwriter consists of the information described as such in Section 8 hereof.

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

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

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

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

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

(j) The Common Securities will be duly authorized for issuance by the Declaration and, when issued and delivered by the Trust to the Company against payment therefor, will be validly issued and (subject to the terms of the Declaration) fully paid undivided beneficial interests in the assets of the Trust and will conform as to legal matters in all material respects to the description thereof in the Registration Statement, the Disclosure Statement and the Prospectus; the issuance of the Common Securities will not be subject to any preemptive or other similar rights; and at the Closing Date, all of the issued and outstanding Common Securities of the Trust will be directly owned by the Company free and clear of all liens, encumbrances, equities or claims.

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

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

(m) The Company, each of its Significant Subsidiaries and the Trust are in compliance in all material respects with all laws administered by and regulations of the U.S. Department of Treasury, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision and any other federal or state bank regulatory authority with jurisdiction over the Company or any of its subsidiaries (which shall include, for the avoidance of doubt, the U.S. Department of Treasury in respect of the TARP Capital Purchase Program) (the “Bank Regulatory Authorities”), other than where such failures to comply would not have a material adverse effect on the Company and its subsidiaries, taken as a whole. Except in each case as set forth in the Disclosure Package and the Prospectus, neither the Company nor any of its Significant Subsidiaries is a party to any written agreement or memorandum of understanding with, or a party to any commitment letter or similar undertaking to, or is subject to any order or directive by, or is a recipient of any extraordinary supervisory letter from, or has adopted any board resolutions at the request of, any Bank Regulatory Authority which restricts materially the conduct of its business, or requires any material

change in its policies or practices relating to capital, credit or management, nor have any of them been advised by any Bank Regulatory Authority that it is contemplating issuing or requesting (or is considering the appropriateness of issuing or requesting) any such order, decree, agreement, memorandum of understanding, extraordinary supervisory letter, commitment letter or similar submission, or any such board resolutions.

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

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

(p) None of the Offerors is required, or upon the issuance and sale of the Securities pursuant to this Agreement, will be required to register as an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended (the "Investment Company Act").

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

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

(b) (i) At the time of filing the Registration Statement, (ii) at the time of the most recent amendment thereto for the purposes of complying with Section 10(a)(3) of the Securities Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Section 13 or 15(d) of the Exchange Act or form of prospectus), and (iii) at the time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c) under the Securities Act) made any offer relating to the Securities in reliance on the exemption of Rule 163, the Company was a "well-known seasoned issuer" as defined in Rule 405 under the Securities Act, including not having been an "ineligible issuer" as defined in Rule 405.

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

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

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

(f) The Company and each of its Significant Subsidiaries is validly existing as a corporation (or, in the case of each of Capital One Bank (USA), National Association and Capital One, National Association, as a national banking association organized under the laws of the United States) in good standing under the laws of its jurisdiction of incorporation and has in all material respects the corporate power and authority to operate its business as it is currently being conducted and to own, lease and operate its properties, and each is duly qualified and is in good standing as a foreign corporation authorized to do business in each jurisdiction in which the nature of its business or its ownership or leasing of property requires such qualification, except where the failure to be so qualified would not have a material adverse effect on the Company and its subsidiaries, taken as a whole.

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

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

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

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

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

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

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

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

and data set forth in the Registration Statement, the Disclosure Package and the Prospectus (and any amendment or supplement thereto) is, in all material respects, accurately presented and prepared on a basis consistent with such consolidated financial statements and the books and records of the Company.

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

(p) Except as disclosed in the Disclosure Package and the Prospectus, or in any document incorporated by reference therein, since the end of the Company's most recent audited fiscal year, the Company's independent public accounting firm has not identified any material weakness in the Company's internal control over financial reporting (whether or not remediated) and there has been no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

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

(r) None of the Company, any of its subsidiaries or the Trust or, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or any of its subsidiaries is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC"); and the Company will not directly or indirectly use the proceeds of the offering of the Securities hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

(s) The operations of the Company and its subsidiaries or the Trust are in material compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions in which the Company, its subsidiaries or the Trust conducts business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency having jurisdiction over the Company, its subsidiaries and the Trust (collectively, the “Money Laundering Laws”) and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the best knowledge of the Company, threatened, which could reasonably be expected to have a material adverse effect on the Company and its subsidiaries, taken as a whole.

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

(a) The execution, delivery and performance of this Agreement have been duly authorized by all necessary action (trust or otherwise) on the part of the Trust, and will not result in any violation of the Declaration or the Certificate of Trust for the Trust, dated as of May 6, 2009 (the “Certificate of Trust”), and do not and will not conflict with, or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Trust under (A) any contract, indenture, mortgage, loan agreement, note, lease or other agreement or instrument to which the Trust is a party or by which it may be bound or to which any of its properties may be subject or (B) any existing applicable law, rule, regulation, judgment, order or decree of any government, governmental instrumentality or court, domestic or foreign, or any regulatory body or administrative agency or other governmental body having jurisdiction over the Trust or any of its properties (except for conflicts, breaches, violations or defaults which would not, individually or in the aggregate, be materially adverse to the Trust, or materially adverse to the transactions contemplated by this Agreement).

(b) The issuance and sale of the Securities and the Common Securities and the consummation by the Trust of the transactions contemplated herein and therein and compliance by the Trust with its obligations hereunder and thereunder will have been duly authorized by all necessary action (trust or otherwise) on the part of the Trust, and will not result in any violation of the Declaration or the Certificate of Trust, and will not conflict with, or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Trust under (A) any contract, indenture, mortgage, loan agreement, note, lease or other agreement or instrument to which the Trust is a party or by which it may be bound or to which any of its properties may be subject or (B) any existing applicable law, rule, regulation, judgment, order or decree of any government, governmental instrumentality or court, domestic or foreign, or any regulatory body or administrative agency or other governmental body having jurisdiction over the Trust or

any of its properties (except for conflicts, breaches, violations or defaults which would not, individually or in the aggregate, be materially adverse to the Trust, or materially adverse to the transactions contemplated by this Agreement).

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

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

(b) In case any action shall be brought against any Underwriter or any person controlling such Underwriter, based upon any preliminary prospectus, the Registration Statement, the Prospectus or the Disclosure Package or any amendment or supplement thereto and with respect to which indemnity may be sought against the Company or the Trust, such Underwriter shall promptly notify the Company and the Trust in writing and the Company and the Trust, as applicable, shall assume the defense thereof, including the employment of counsel reasonably satisfactory to such indemnified party and payment of all fees and expenses. Any Underwriter or any such controlling person shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Underwriter or such controlling person unless (i) the employment of such counsel shall have been specifically authorized in writing by the Company or the Trust, (ii) the Company or the Trust shall have failed to assume the defense and employ counsel or (iii) the named parties to any such action (including any impleaded parties) include both such Underwriter or such controlling person and the Company or the Trust and such Underwriter or such controlling person shall have been advised by such counsel that there may be one or more legal defenses available to it which are different from or additional to those available to the Company or the Trust (in which case the Company or the Trust

shall not have the right to assume the defense of such action on behalf of such Underwriter or such controlling person, it being understood, however, that the Company or Trust shall not, in connection with any one such action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, be liable for the reasonable fees and expenses of more than one separate firm of attorneys (in addition to any local counsel) for all such Underwriters and controlling persons, which firm shall be designated in writing by the Representatives, and that all such reasonable fees and expenses shall be reimbursed as they are incurred). Neither the Company nor the Trust shall be liable for any settlement of any such action effected without its written consent but if settled with the written consent of the Company or the Trust, as applicable, the Company and Trust agree to indemnify and hold harmless any Underwriter and any such controlling person from and against any loss or liability by reason of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement (i) includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding and (ii) does not include any statements as to, or an admission of, fault, culpability or failure to act by or on behalf of any indemnified party.

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

(d) If the indemnification provided for in paragraphs (a), (b) and (c) of this Section 8 is unavailable to an indemnified party in respect of any losses, claims, damages, liabilities or judgments referred to therein, then each indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages, liabilities and judgments (i) in such proportion as is appropriate to reflect the relative benefits received by the Company and the Trust on the one hand and the Underwriters on the other hand from the offering of the Securities or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, the Trust and the Underwriters in connection with the statements or omissions which resulted in such losses, claims, damages, liabilities or judgments, as well as any other relevant equitable considerations. The relative benefits received by the Company, the Trust and the Underwriters shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company and the Trust, and the total underwriting discounts and commissions received by the Underwriters, bear to the total price to the public of the Securities, in each case as set forth in the table on the cover page of the Prospectus. The relative fault of the Company, the Trust and the Underwriters shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the Company, the Trust or the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

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

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

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

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

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

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

(d) At the Closing Date, at least one "nationally recognized statistical rating organization" (as defined for purposes of Rule 436(g)(2) under the Securities Act), has rated the Securities in one of its four highest categories, and subsequent to the execution and delivery of this Agreement and prior to the Closing Date, there shall not have been any downgrading, nor shall any notice have been given of any intended or potential downgrading or of any review for a possible change that does not indicate the direction of the possible change, in the rating accorded any of the Company's securities by any such nationally recognized statistical rating organization.

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

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

(g) You shall have received on the Closing Date an opinion (reasonably satisfactory to you and counsel for the Underwriters), dated the Closing Date, of Gibson, Dunn & Crutcher LLP, special counsel to the Company.

(h) You shall have received on the Closing Date an opinion (reasonably satisfactory to you and counsel for the Underwriters), dated the Closing Date, of Richards, Layton & Finger, P.A., special Delaware counsel to the Company and the Trust.

(i) You shall have received on the Closing Date an opinion (reasonably satisfactory to you and counsel for the Underwriters), dated the Closing Date, of Richards, Layton & Finger, P.A., special Delaware counsel to the Company and the Trust relating to BNY Mellon Trust of Delaware.

(j) You shall have received on the Closing Date an opinion (reasonably satisfactory to you and counsel for the Underwriters), dated the Closing Date, of Emmet, Marvin & Martin, LLP, counsel to The Bank of New York Mellon Corporation, as Indenture Trustee under the Indenture and as Guarantee Trustee under the Guarantee Agreement, and The Bank of New York Mellon Trust Company, N.A., as Institutional Trustee under the Declaration.

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

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

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

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

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

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

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

non-defaulting Underwriter and the Company. In any such case which does not result in termination of this Agreement, either you or the Company shall have the right to postpone the Closing Date, but in no event for longer than seven days, in order that the required changes, if any, in the Registration Statement and the Prospectus or any other documents or arrangements may be effected. Any action taken under this paragraph shall not relieve any defaulting Underwriter from liability in respect of any default of any such Underwriter under this Agreement.

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

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

13. Miscellaneous. Notices given pursuant to any provision of this Agreement shall be addressed as follows: (a) if to the Trust, to Capital One Capital V, c/o Capital One Financial Corporation, 1680 Capital One Drive, McLean, Virginia 22102, Attention: Administrative Trustees, (b) if to the Company, to Capital One Financial Corporation, 1680 Capital One Drive, McLean, Virginia 22102, Attention: General Counsel, and (c) if to any Underwriter, to you c/o J.P. Morgan Securities Inc., 270 Park Avenue, New York, NY 10017, Attention: General Counsel, or in any case to such other address as the person to be notified may have requested in writing.

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

15. Reimbursement of Underwriters' Expenses. If this Agreement shall be terminated by the Underwriters for any reason under Section 10 of this Agreement, or because of any failure or refusal on the part of the Offerors to comply with the terms or to satisfy any of the conditions of this Agreement, the Company agrees to reimburse the several Underwriters for all out-of-pocket expenses (including the fees and disbursements of counsel) reasonably incurred by them.

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

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

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

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

Very truly yours,

CAPITAL ONE CAPITAL V

By: /s/ Thomas A. Feil

Name: Thomas A. Feil

Title: Administrative Trustee

CAPITAL ONE FINANCIAL CORPORATION

By: /s/ Stephan Linehan

Name: Stephan Linehan

Title: Treasurer

Accepted:

J.P. MORGAN SECURITIES INC.  
BANC OF AMERICA SECURITIES LLC  
MORGAN STANLEY & CO. INCORPORATED

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

By: J.P. MORGAN SECURITIES INC.

By: /s/ Stephen L. Sheiner

Name: Stephen L. Sheiner

Title: Vice President

By: BANC OF AMERICA SECURITIES LLC

By: /s/ Kyle Stegemeyer

Name: Kyle Stegemeyer

Title: Managing Director

By: MORGAN STANLEY & CO. INCORPORATED

By: /s/ Yurij Sylz

Name: Yurij Sylz

Title: Vice President

SCHEDULE I

Underwriters	Number of Securities to be Purchased
J.P. Morgan Securities Inc.	266,667
Banc of America Securities LLC	266,667
Morgan Stanley & Co. Incorporated	266,666
Credit Suisse Securities (USA) LLC	45,000
Deutsche Bank Securities Inc.	45,000
RBS Securities Inc.	45,000
Wells Fargo Securities, LLC	45,000
The Williams Capital Group, L.P.	20,000
<b>TOTAL</b>	<b>1,000,000</b>



FOURTH SUPPLEMENTAL INDENTURE

between

CAPITAL ONE FINANCIAL CORPORATION  
as Issuer

and

THE BANK OF NEW YORK MELLON  
as Trustee

DATED AS OF AUGUST 5, 2009

---

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

---

FOURTH SUPPLEMENTAL INDENTURE, dated as of August 5, 2009 (this “Fourth Supplemental Indenture”), among CAPITAL ONE FINANCIAL CORPORATION, a corporation duly organized and existing under the laws of the State of Delaware (hereinafter called the “Company”), having its principal office at 1680 Capital One Drive, McLean, Virginia 22102 and THE BANK OF NEW YORK MELLON, a corporation duly organized and existing under the laws of the State of New York, as Trustee (hereinafter called the “Trustee”).

#### RECITALS

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

WHEREAS, pursuant to Section 2.1 and 3.1 of the Indenture, the Company desires to provide for the establishment of a new series of Securities under the Indenture to be known as its 10.25% Junior Subordinated Debt Securities due 2039, the form and substance of such Securities and the terms, provisions and conditions thereof to be set forth as provided in the Indenture and this Fourth Supplemental Indenture;

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

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

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

#### ARTICLE I DEFINITIONS

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

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

“Capital Treatment Event” means the reasonable determination by the Company that, as a result of: (1) any amendment to, or change in, the laws or regulations of the United States or any political subdivision of or in the United States that is enacted or becomes effective after the initial issuance of the Trust Preferred Securities; (2) any proposed change in such laws or regulations that is announced after the initial issuance of the Trust Preferred Securities; or (3) any official administrative decision or judicial decision or administrative action or other official

pronouncement interpreting or applying such laws or regulations that is announced after initial issuance of the Trust Preferred Securities, there is more than an insubstantial risk of impairment of the Company's ability to treat the Trust Preferred Securities as Tier 1 capital (or the then equivalent thereof) for purposes of the capital adequacy guidelines of the Federal Reserve (or any successor regulatory authority with jurisdiction over bank holding companies), as then in effect and applicable to the Company; provided, however, that the distribution of the Junior Subordinated Debt Securities in connection with the liquidation of the Trust by the Company shall not in and of itself constitute a Capital Treatment Event unless such liquidation shall have occurred in connection with a Tax Event.

"Company." has the meaning set forth in the Recitals.

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

"Fourth Supplemental Indenture" has the meaning set forth in the Recitals.

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

"Indenture" has the meaning set forth in the Recitals.

"Junior Subordinated Debt Securities" has the meaning set forth in Section 2.1(a) hereof.

"Non-Acceleration Period" means the period commencing immediately upon the termination of an Extended Interest Payment Period consisting of 10 consecutive semi-annual periods, and ending on the earlier of (i) the Interest Payment Date relating to the 10th consecutive semi-annual period after the semi-annual period during which the Non-Acceleration Period commences, (ii) the redemption of the Junior Subordinated Debt Securities in accordance with the Indenture, and (iii) the Stated Maturity of the Junior Subordinated Debt Securities.

"Tax Event" means the receipt by the Company or the Trust of an opinion of tax counsel (which may be the Company's counsel or counsel of an Affiliate but not an employee and must be reasonably acceptable to the Institutional Trustee) experienced in such matters (which opinion shall not have been rescinded), to the effect that, as a result of: (1) any amendment to or change in the laws or regulations of the United States or any political subdivision or taxing authority of or in the United States that is enacted or becomes effective after the initial issuance of the Trust Preferred Securities; (2) any proposed change in such laws or regulations that is announced after the initial issuance of the Trust Preferred Securities; or (3) any official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying such laws or regulations that is announced after the initial issuance of the Trust Preferred Securities, there is more than an insubstantial risk that: (i) the Trust is, or will be within 90 days of the date of such opinion, subject to United States federal income tax with respect to income received or accrued on the Junior Subordinated Debt Securities; (ii) interest payable by the Company on the Junior Subordinated Debt Securities is not, or within 90 days of the date of such opinion, will not be, deductible by the Company, in whole or in part, for United States federal income tax purposes; or (iii) the Trust is, or will be within 90 days of the date of such opinion, subject to more than a de minimis amount of other taxes, duties, assessments or other governmental charges.

“Treasury Dealer” means J.P. Morgan Securities Inc. (or its successor) or, if J.P. Morgan Securities Inc. (or its successor) refuses to act as Treasury Dealer for this purpose or ceases to be a primary U.S. Government securities dealer, another nationally recognized investment banking firm that is a primary U.S. Government securities dealer specified by the Company for these purposes.

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

“Treasury Security” means the United States Treasury security that the Treasury Dealer determines would be appropriate to use, at the time of determination and in accordance with standard market practice, in pricing the Junior Subordinated Debt Securities being redeemed in a tender offer based on a spread to United States Treasury yields.

“Treasury Price” means the bid-side price for the Treasury Security as of the third trading day preceding the Redemption Date, as set forth in the daily statistical release (or any successor release) published by the Federal Reserve Bank of New York on that trading day and designated “Composite 3:30 p.m. Quotations for U.S. Government Securities,” except that: (1) if that release (or any successor release) is not published or does not contain that price information on that trading day; or (2) if the Treasury Dealer determines that the price information is not reasonably reflective of the actual bid-side price of the Treasury Security prevailing at 3:30 p.m., New York City time, on that trading day, then the Treasury Price will instead mean the bid-side price for the Treasury Security at or around 3:30 p.m., New York City time, on that trading day (expressed on a next trading day settlement basis) as determined by the Treasury Dealer through such alternative means as the Treasury Dealer considers to be appropriate under the circumstances.

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

“Trust Preferred Securities Guarantee” has the meaning set forth in the Declaration of Trust.

“Trust Preferred Security” has the meaning set forth in the Declaration of Trust.

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

## ARTICLE II TERMS OF SERIES OF SECURITIES

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

(a) Designation. The Securities of this series shall be known and designated as the “10.25% Junior Subordinated Debt Securities due 2039” of the Company (the “Junior Subordinated Debt Securities”). The Junior Subordinated Debt Securities

initially shall be issued to Capital One Capital V, a Delaware statutory trust (the "Trust"). The Declaration of Trust for the Trust shall be the Amended and Restated Declaration of Trust, dated as of August 5, 2009, among the Company, as Sponsor, BNY Mellon Trust of Delaware, as Delaware Trustee, The Bank of New York Mellon Trust Company, N.A., as Institutional Trustee, and the Administrative Trustees named therein (the "Declaration of Trust"). The guarantee (the "Guarantee") will be issued pursuant to the Guarantee Agreement, dated as of August 5, 2009, between the Company and The Bank of New York Mellon, as Guarantee Trustee.

(b) Aggregate Principal Amount. The maximum aggregate principal amount of the Junior Subordinated Debt Securities which may be authenticated and delivered under the Indenture and this Fourth Supplemental Indenture is \$1,000,010,000 (except for Junior Subordinated Debt Securities authenticated and delivered upon registration of transfer of, or exchange for, or in lieu of, other Junior Subordinated Debt Securities pursuant to Section 3.4, 3.5, 3.6, 9.6 or 11.6 of the Indenture).

(c) Denominations. The Junior Subordinated Debt Securities will be issued only in fully registered form, and the authorized minimum denomination of the Junior Subordinated Debt Securities shall be \$1,000 principal amount and any integral multiple thereof.

(d) Maturity. The principal amount of the Junior Subordinated Debt Securities shall be payable in full on August 15, 2039, subject to and in accordance with the provisions of the Indenture and this Fourth Supplemental Indenture.

(e) Rate of Interest. The Junior Subordinated Debt Securities will bear interest at the annual rate of 10.25%, payable semi-annually in arrears on February 15 and August 15 of each year (the "Interest Payment Dates," as defined in the Indenture), commencing February 15, 2010. Interest payments not paid when due will themselves accrue additional interest at the annual rate of 10.25% on the amount of unpaid interest, to the extent permitted by law, compounded semi-annually. The amount of interest payable for any period will be computed on the basis of a 360-day year comprised of twelve 30-day months. The amount of interest payable for any period shorter than a full period will be computed on the basis of a 30-day month and, for periods less than a month, the actual number of days elapsed per 30-day month.

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

(g) Option to Defer Interest Payments. Interest payments on the Junior Subordinated Debt Securities shall be subject to deferral to the extent and in the manner provided in Section 13.1 of the Indenture for one or more Extended Interest Payment Periods of up to ten (10) consecutive semi-annual periods. If the Company has deferred interest payments under this clause (g) for an Extended Interest Payment Period

consisting of 10 consecutive semi-annual periods, no interest will be due or payable on the Interest Payment Date relating to the last such semi-annual period, *provided, however*, that all accrued and unpaid interest (including any Additional Interest) will become due and payable on the next subsequent Interest Payment Date. With respect to each Interest Payment Date, the Company shall deliver to the Trustee written notice of any optional deferral pursuant to this clause (g) at least ten and not more than sixty Business Days prior to such Interest Payment Date (which notice requirement shall be in lieu of, and not in addition to, the notice requirement described in Section 13.2 of the Indenture, which shall not apply to the Junior Subordinated Debt Securities.)

(h) Federal Reserve Approvals. The Company shall notify the Federal Reserve upon the commencement of any Extended Interest Payment Period. In addition, to the extent required under the Federal Reserve's capital rules, the Company shall obtain the approval of the Federal Reserve prior to exercising any redemption rights in respect of the Junior Subordinated Debt Securities, or dissolving or liquidating the Trust.

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

(j) Events of Default. An Event of Default with respect to the Junior Subordinated Debt Securities shall be (i) an Event of Default as defined in the Indenture, (ii) a failure to pay principal or premium when due on the Junior Subordinated Debt Securities and (iii) a material breach of a covenant or warranty in the Indenture where the breach continues for 90 days after written notice by the Trustee or Holders of at least 25% of the principal amount of the Junior Subordinated Debt Securities; provided that the nonpayment of interest for so long as and to the extent permitted pursuant to clause (g) above shall not be deemed to be a default in the payment of interest for the purposes of Section 5.1(a) of the Indenture and shall not otherwise be deemed an Event of Default with respect to the Junior Subordinated Debt Securities. For the avoidance of doubt, and without prejudice to any other remedies that may be available under the Indenture to the Trustee, the Holders of the Junior Subordinated Debt Securities or the holders of the Trust Preferred Securities, no breach by the Company of any covenant or obligation under the Indenture or the terms of the Junior Subordinated Debt Securities shall be an Event of Default, except those that are specifically identified as an Event of Default under the Indenture. During a Non-Acceleration Period, upon occurrence of an Event of Default described in Section 5.1(a) of the Indenture, (i) any holder of the Trust Preferred Securities issued by the Trust shall have the right to institute a suit directly against the Company for enforcement of payment to such holder of interest on the Junior Subordinated Debt Securities having a principal amount equal to the aggregate Liquidation Amount (as defined in the Declaration of Trust for the Trust) of such Trust Preferred Securities held by such holders, and (ii) any such holder shall not have the right to institute a suit against the Company for the payment of principal otherwise provided pursuant to Section 5.8 of the Indenture.

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

(l) Redemption. The Junior Subordinated Debt Securities are redeemable at the option of the Company, subject to the terms and conditions of Article XI of the Indenture and subject to the Company having received prior approval from the Federal Reserve if then required under applicable capital guidelines or policies of the Federal Reserve (i) in whole or in part at the option of the Company on one or more occasions at any time after August 15, 2014, or (ii) in whole but not in part at any time if a Tax Event or a Capital Treatment Event has occurred and is continuing and the Company cannot cure the Tax Event or Capital Treatment Event by some reasonable action, in which case the Company may redeem the Junior Subordinated Debt Securities within 90 days following the occurrence of the Tax Event or Capital Treatment Event. The redemption price of the Junior Subordinated Debt Securities shall be, (A) in the case of a redemption pursuant to clause (i), equal to the greater of (x) 100% of the principal amount of the Junior Subordinated Debt Securities or (y) the present value of scheduled payments of principal and interest from the Redemption Date to August 15, 2039, discounted to the Redemption Date on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at a discount rate equal to the Treasury Rate plus a spread of 0.75%, plus an amount equal to accrued and unpaid interest thereon to the Redemption Date and (B) in the case of a redemption pursuant to clause (ii), the aggregate principal amount of the Junior Subordinated Debt Securities so redeemed at a redemption price of \$1,000.00 per Note plus an amount equal to accrued and unpaid interest thereon to the Redemption Date, in each case payable in cash.

(m) Sinking Fund. The Junior Subordinated Debt Securities shall not be subject to any sinking fund or analogous provisions.

(n) Forms. The Junior Subordinated Debt Securities shall be substantially in the form of Annex A attached hereto, with such modifications thereto as may be approved by the authorized officer executing the same. The Declaration of Trust shall be substantially in the form of Annex B attached hereto, with such modifications thereto as

may be approved by the authorized officer executing the same. The Guarantee Agreement shall be substantially in the form of Annex C attached hereto, with such modifications thereto as may be approved by the authorized officer executing the same.

(o) The subordination provisions of Article XIV of the Indenture shall apply; *provided, however*, that for the purposes of the Junior Subordinated Debt Securities (but not for the purposes of any other Securities unless specifically set forth in the terms of such Securities), the definition of “Senior Indebtedness” in the Indenture is hereby amended in its entirety to read as follows:

“Senior Indebtedness” means:

(1) the principal, premium, if any, and interest in respect of (a) indebtedness for money borrowed and (b) indebtedness evidenced by securities, notes, debentures, bonds or other similar instruments issued by the Company, including the Company’s junior subordinated debentures or guarantees issued in connection with any future traditional trust preferred securities, each of which will rank senior to the Trust Preferred Securities issued by the Trust;

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

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

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

(5) all of the Company’s obligations in respect of interest rate swap, cap or other agreements, interest rate future or option contracts, currency swap agreements, currency future or option contracts, hedging arrangements and other similar agreements;

(6) all obligations of the type referred to in clauses (1) through (5) above of other persons for the payment of which the Company is responsible or liable as obligor, guarantor or otherwise; and

(7) all obligations of the type referred to in clauses (1) through (6) above of other persons secured by any lien on any of the Company’s property or assets, whether or not such obligation is assumed by the Company;

except that Senior Indebtedness will not include:

(A) except as provided in clause (C), any indebtedness issued after the date hereof under the Indenture that is expressly subordinated to the Junior Subordinated Debt Securities;

(B) the Trust Preferred Securities Guarantee;

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

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

(E) the Existing Parity Obligations; and

(F) the junior subordinated debt securities held by Capital One Capital II, Capital One Capital III and Capital One Capital IV.

(p) Dividend Stopper. During any Extended Interest Payment Period or New Equity Settlement Period the Company shall not, and shall not permit any Subsidiary of the Company to, (i) declare or pay any dividends or distributions or redeem, purchase, acquire or make a liquidation payment on any of the Company's capital stock or the capital stock of its Subsidiaries or (ii) make any payment of principal of or interest or premium, if any, on, or repay, repurchase or redeem, any debt securities of the Company (including other junior subordinated debt securities or other junior subordinated debt) that rank *pari passu* with or junior in interest to the Junior Subordinated Debt Securities or (iii) make any guarantee payments on any guarantee by the Company of the debt securities of any of its Subsidiaries (including under other guarantees of junior subordinated debt securities or other junior subordinated debt) if such guarantee ranks *pari passu* with or junior in interest to the Junior Subordinated Debt Securities, other than, in the case of each of clauses (i), (ii) and (iii), (A) dividends or distributions in capital stock of the Company, (B) payments under the Guarantee with respect to the Trust Preferred Securities and the Common Securities of the Trust, (C) any declaration or payment of a dividend in connection with the implementation of a shareholders' rights plan, or the issuance of stock under any such plan or the redemption or repurchase of any such rights pursuant thereto, (D) repurchases, redemptions or other acquisitions of shares of capital stock of the Company in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of employees, officers, directors or consultants and (E) solely in the case of a Subsidiary of the Company, any declaration of dividends or distributions on the capital stock of such Subsidiary to the Company or one of its Affiliates.

ARTICLE III  
[INTENTIONALLY OMITTED]

ARTICLE IV  
MISCELLANEOUS

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

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

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

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

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

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

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

\* \* \* \*

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

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

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

CAPITAL ONE FINANCIAL CORPORATION

By: /s/ Thomas A. Feil  
Name: Thomas A. Feil  
Title: Assistant Treasurer

THE BANK OF NEW YORK MELLON,  
as Trustee

By: /s/ Christopher Greene  
Name: Christopher Greene  
Title: Vice President

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

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

**CAPITAL ONE FINANCIAL CORPORATION**  
**10.25% Junior Subordinated Debt Securities due 2039**

**No.**

**\$**

**CUSIP No.** 14040HAT2

CAPITAL ONE FINANCIAL CORPORATION, a corporation organized and existing under the laws of the State of Delaware (hereinafter called the "Company," which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay to The Bank of New York Mellon Trust Company, N.A., the Institutional Trustee of CAPITAL ONE CAPITAL V, or registered assigns, the principal sum of dollars (\$) on August 15, 2039. The Company is authorized to direct payments to The Bank of New York Mellon Trust Company, N.A., in its capacity as paying agent under the Declaration of Trust (as defined below), or any other paying agent appointed under the terms of the Declaration of Trust. The Company further promises to pay interest on said principal sum from August 5, 2009 or from the most recent interest payment date (each such date, an "Interest Payment Date") on which interest has been paid or duly provided for, semi-annually (subject to deferral as set forth herein) in arrears on February 15 and August 15 of each year, commencing February 15, 2010, at the rate of 10.25% per annum, until the principal hereof shall have become due and payable. Interest payments not paid when due will themselves accrue additional interest at the annual rate of 10.25% on the amount of unpaid interest, to the extent permitted by law, compounded semi-annually.

The amount of interest payable for any period will be computed on the basis of a 360-day year comprised of twelve 30-day months. The amount of interest payable for any period shorter than a full period will be computed on the basis of a 30-day month period and, for periods less than a month, the actual number of days elapsed per 30-day month. In the event that any date on which interest is payable on this Security is not a Business Day, then a payment of the interest payable on such date will be made on the next succeeding day which is a Business Day (and without any interest or other payment in respect of any such delay). A "Business Day" shall mean any day other than a Saturday, Sunday, or any other day on which banking institutions in New York, New York are authorized or obligated by any applicable law or executive order to close. The interest installment so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest installment, which shall be (i) the Business Day next preceding such Interest Payment Date if this Security is issued in the form of a Global Security, or (ii) the first day (whether or not a Business Day) of the month in which such Interest Payment Date occurs if this Security is not issued in the form of a Global Security. Any such interest installment not so punctually paid or duly provided for shall forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Securities of this series not fewer than ten days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities of this series may be listed, and upon such notice as may be required by such exchange, all as more fully provided in said Indenture.

So long as no Event of Default has occurred and is continuing, the Company shall have the right at any time and from time to time during the term of this Security to defer payment of interest on this Security for up to ten consecutive semi-annual interest payment periods with respect to each deferral period (each an "Extended Interest Payment Period"), but shall pay all interest then accrued and unpaid (together with interest thereon to the extent permitted by applicable law, compounded semi-annually at the rate specified in this Security) on the first Interest Payment Date following the termination of such Extended Interest Payment Period; *provided, however*, that no Extended Interest Payment Period shall extend beyond the Stated Maturity of the principal of this Security. Upon termination of any such Extended Interest Payment Period and upon the payment of all accrued and unpaid interest (including any Additional Interest) then due, the Company may elect to begin a new Extended Interest Payment Period, subject to the above requirements. No interest shall be due and payable during an Extended Interest Payment Period except on the first Interest Payment Date thereafter.

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

Unless the Company has paid all accrued and payable interest on this Security, the Company shall not, and shall not permit any Subsidiary of the Company to, (i) declare or pay any dividends or distributions or redeem, purchase, acquire or make a liquidation payment on any of the Company's capital stock or the capital stock of its Subsidiaries or (ii) make any payment of principal of or interest or premium, if any, on, or repay, repurchase or redeem any debt securities of the Company (including other junior subordinated debt securities or other junior subordinated debt) that rank *pari passu* with or junior in interest to the Junior Subordinated Debt Securities or (iii) make any guarantee payments on any guarantee by the Company of the debt securities of any of its Subsidiaries (including under other guarantees of junior subordinated debt securities or other junior subordinated debt) if such guarantee ranks *pari passu* with or junior in interest to the Junior Subordinated Debt Securities, other than, in the case of each of clauses (i), (ii) and (iii), (A) dividends or distributions in capital stock of the Company, (B) payments under the Guarantee with respect to the Trust Preferred Securities and the Common Securities of the Trust, (C) any declaration or payment of a dividend in connection with the implementation of a shareholders' rights plan, or the issuance of stock under any such plan or the redemption or repurchase of any such rights pursuant thereto, (D) repurchases, redemptions or other acquisitions of shares of capital stock of the Company in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of employees, officers, directors or consultants and (E) solely in the case of a Subsidiary of the Company, any declaration of dividends or distributions on the capital stock of such Subsidiary to the Company or one of its Affiliates.

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

The Securities are not deposits or savings accounts. The Securities are not insured by the Federal Deposit Insurance Corporation (the "FDIC") or any other governmental agency or instrumentality. The Securities are not guaranteed under the FDIC's Temporary Liquidity Guarantee Program.

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

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

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

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

CAPITAL ONE FINANCIAL CORPORATION

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

Name:

Title:

Attest:

\_\_\_\_\_

Title:

Dated: August , 2009

This Security is one of a duly authorized issue of securities of the Company (herein called the "Securities"), issued and to be issued in one or more series under a Junior Subordinated Indenture, dated as of June 6, 2006, as supplemented by the Fourth Supplemental Indenture, dated as of August 5, 2009 (herein together called the "Indenture"), between the Company and The Bank of New York Mellon, as Trustee (herein called the "Trustee," which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Trustee, the Company and the Holders of the Securities, and of the terms upon which the Securities are, and are to be, authenticated and delivered. This Security is one of the series designated on the face hereof, limited in aggregate principal amount of \$1,000,010,000, issuable on one or more occasions.

All terms used in this Security that are defined in the Indenture or in the Amended and Restated Declaration of Trust, dated as of August 5, 2009 (the "Declaration of Trust"), for CAPITAL ONE CAPITAL V, among Capital One Financial Corporation, as Sponsor, and the Trustees named therein, shall have the meanings assigned to them in the Indenture or the Declaration of Trust, as the case may be.

The Company may at any time, at its option, and subject to the terms and conditions of Article XI of the Indenture and Section 2.1(l) of the Fourth Supplemental Indenture, and subject to prior approval by the Board of Governors of the Federal Reserve System if then required, redeem this Security in whole or in part at any time after August 15, 2014, without premium or penalty, at a redemption price equal to the greater of (x) 100% of the principal amount of the Junior Subordinated Debt Securities or (y) the present value of scheduled payments of principal and interest from the Redemption Date to August 15, 2039, discounted to the Redemption Date on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at a discount rate equal to the Treasury Rate (as defined below) plus a spread of 0.75%, plus an amount equal to accrued and unpaid interest thereon to the Redemption Date.

For purposes of the above:

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

"Treasury Security" means the United States Treasury security that the Treasury Dealer determines would be appropriate to use, at the time of determination and in accordance with standard market practice, in pricing the Junior Subordinated Debt Securities being redeemed in a tender offer based on a spread to United States Treasury yields;

"Treasury Price" means the bid-side price for the Treasury Security as of the third trading day preceding the Redemption Date, as set forth in the daily statistical release (or any successor release) published by the Federal Reserve Bank of New York on that trading day and designated "Composite 3:30 p.m. Quotations for U.S. Government Securities," except that: (1) if that release (or any successor release) is not published or does not contain that price information on that

trading day; or (2) if the Treasury Dealer determines that the price information is not reasonably reflective of the actual bid-side price of the Treasury Security prevailing at 3:30 p.m., New York City time, on that trading day, then the Treasury Price will instead mean the bid-side price for the Treasury Security at or around 3:30 p.m., New York City time, on that trading day (expressed on a next trading day settlement basis) as determined by the Treasury Dealer through such alternative means as the Treasury Dealer considers to be appropriate under the circumstances; and

“Treasury Dealer” means J.P. Morgan Securities Inc. (or its successor) or, if J.P. Morgan Securities Inc. (or its successor) refuses to act as Treasury Dealer for this purpose or ceases to be a primary U.S. Government securities dealer, another nationally recognized investment banking firm that is a primary U.S. Government securities dealer specified by the Company for these purposes.

Upon the occurrence and during the continuation of a Tax Event or a Capital Treatment Event in respect of a Trust, the Company may, at its option, at any time within 90 days of the occurrence of such Tax Event or Capital Treatment Event redeem this Security, in whole but not in part, subject to the provisions of Article XI of the Indenture, at a redemption price equal to the aggregate principal amount of the Junior Subordinated Debt Securities so redeemed at a redemption price of \$1,000.00 per Note plus an amount equal to accrued and unpaid interest thereon, including Additional Interest, if any, to the Redemption Date. In the event of redemption of this Security in part only, a new Security or Securities of this series for the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof.

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

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

Holder of this Security (unless revoked as provided in the Indenture) shall be conclusive and binding upon such Holder and upon all future Holders and owners of this Security and of any Security issued in exchange herefor or in place hereof (whether by registration of transfer or otherwise), irrespective of whether or not any notation of such consent or waiver is made upon this Security.

As provided in and subject to the provisions of the Indenture, if an Event of Default with respect to the Securities of this series at the time Outstanding occurs and is continuing, then and in every such case the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities of this series may declare the principal amount of all the Securities of this series to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by the Holders), *provided that*, in the case of the Securities of this series issued to a Trust, if upon an Event of Default (other than any Event of Default due to non payment of interest on any Interest Payment Date during a Non-Acceleration Period), the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities of this series fails to declare the principal of all the Securities of this series to be immediately due and payable, the holders of at least 25% in aggregate Liquidation Amount of the Trust Preferred Securities then outstanding shall have such right by a notice in writing to the Company and the Trustee; and upon any such declaration the principal amount of and the accrued interest (including Additional Interest) on all the Securities of this series shall become immediately due and payable, provided that the payment of principal and interest (including Additional Interest) on such Securities shall remain subordinated to the extent provided in Article XIV of the Indenture and Section 2.1(o) of the Fourth Supplemental Indenture.

Subject to the provisions of the Indenture, if the Company fails to pay all accrued and unpaid interest on the Outstanding Securities within 30 days following an Extended Interest Payment Period of five years, such failure shall constitute an Event of Default under the Indenture; however, prior to the expiration of ten consecutive years after the commencement of an Extended Interest Payment Period, the occurrence of such an Event of Default shall not entitle the Trustee or the Holders of the Outstanding Securities to declare the principal amount of the Outstanding Securities immediately due and payable. Instead, the Trustee and the Holders shall, prior to the earlier of (i) the Stated Maturity of the Securities and (ii) the expiration of ten consecutive years after the commencement of such Extended Interest Payment Period, only have the right to seek payment of such interest.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of (and premium, if any) and interest on this Security at the times, places and rate, and in the coin or currency, herein prescribed (subject to the deferral rights of the Company described in the Indenture).

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Securities Register, upon surrender of this Security for registration of transfer at the office or agency of the Company maintained under Section 10.2 of the Indenture duly endorsed by, or accompanied by written instrument of transfer in form satisfactory to the Company and the Securities Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Securities of this series,

of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees. No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

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

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

The Securities of this series are issuable only in registered form without coupons in denominations of \$1,000 and in any multiple thereof. As provided in the Indenture and subject to certain limitations therein set forth, Securities of this series are exchangeable for like aggregate principal amount of Securities of such series of a different authorized denomination, as requested by the Holder surrendering the same.

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

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

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

THE BANK OF NEW YORK MELLON,  
as Trustee

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

Dated: August , 2009





AMENDED AND RESTATED DECLARATION

OF TRUST

CAPITAL ONE CAPITAL V

Dated as of August 5, 2009

## TABLE OF CONTENTS

	<u>Page</u>
Article I. INTERPRETATION AND DEFINITIONS	1
Section 1.1 Definitions	1
Article II. TRUST INDENTURE ACT	7
Section 2.1 Trust Indenture Act; Application	7
Section 2.2 Lists of Holders of Securities	8
Section 2.3 Reports by the Institutional Trustee	8
Section 2.4 Periodic Reports to Institutional Trustee	8
Section 2.5 Evidence of Compliance with Conditions Precedent	8
Section 2.6 Declaration Defaults; Waiver	9
Section 2.7 Declaration Default; Notice	10
Article III. ORGANIZATION	11
Section 3.1 Name	11
Section 3.2 Office	11
Section 3.3 Purpose	11
Section 3.4 Authority	11
Section 3.5 Title to Property of the Trust	11
Section 3.6 Powers and Duties of the Administrative Trustees	12
Section 3.7 Prohibition of Actions by the Trust and the Trustees	14
Section 3.8 Powers and Duties of the Institutional Trustee	15
Section 3.9 Certain Duties and Responsibilities of the Institutional Trustee	17
Section 3.10 Certain Rights of Institutional Trustee	19
Section 3.11 Delaware Trustee	21
Section 3.12 Execution of Documents	21
Section 3.13 Not Responsible for Recitals or Issuance of Securities	21
Section 3.14 Duration of Trust	21
Section 3.15 Mergers	22
Section 3.16 Paying Agent	23
Article IV. SPONSOR	24
Section 4.1 Sponsor's Purchase of Common Securities	24
Section 4.2 Responsibilities of the Sponsor	24
Section 4.3 Exchanges by the Sponsor	24

**TABLE OF CONTENTS**  
(continued)

	<u>Page</u>
Article V. TRUSTEES	25
Section 5.1    Number of Trustees	25
Section 5.2    Delaware Trustee	26
Section 5.3    Institutional Trustee; Eligibility	26
Section 5.4    Qualifications of Administrative Trustees and Delaware Trustee Generally	27
Section 5.5    Initial Trustees; Additional Powers of Administrative Trustees	27
Section 5.6    Appointment, Removal and Resignation of Trustees	28
Section 5.7    Vacancies among Trustees	29
Section 5.8    Effect of Vacancies	29
Section 5.9    Meetings	30
Section 5.10   Delegation of Power	30
Section 5.11   Merger, Conversion, Consolidation or Succession to Business	30
Article VI. DISTRIBUTIONS	31
Section 6.1    Distributions	31
Article VII. ISSUANCE OF SECURITIES	31
Section 7.1    General Provisions Regarding Securities	31
Section 7.2    Issuance of Securities; Purchase of Junior Subordinated Debt Securities	32
Article VIII. TERMINATION OF TRUST	33
Section 8.1    Termination of Trust	33
Article IX. TRANSFER OF INTERESTS	34
Section 9.1    Transfer of Securities	34
Section 9.2    Transfer of Certificates	34
Section 9.3    Deemed Security Holders	34
Section 9.4    Book Entry Interests	35
Section 9.5    Notices to Clearing Agency	35
Section 9.6    Appointment of Successor Clearing Agency	35
Section 9.7    Definitive Trust Preferred Security Certificates	36
Section 9.8    Mutilated, Destroyed, Lost or Stolen Certificates	36

**TABLE OF CONTENTS**  
(continued)

	<u>Page</u>
Article X. LIMITATION OF LIABILITY OF HOLDERS OF SECURITIES, TRUSTEES OR OTHERS	37
Section 10.1 Liability	37
Section 10.2 Exculpation	37
Section 10.3 Fiduciary Duty	38
Section 10.4 Indemnification	38
Section 10.5 Outside Businesses	41
Article XI. ACCOUNTING	42
Section 11.1 Fiscal Year	42
Section 11.2 Certain Accounting Matters	42
Section 11.3 Banking	42
Section 11.4 Withholding	42
Article XII. AMENDMENTS AND MEETINGS	43
Section 12.1 Amendments	43
Section 12.2 Meetings of the Holders of Securities; Action by Written Consent	45
Article XIII. REPRESENTATIONS OF INSTITUTIONAL TRUSTEE AND DELAWARE TRUSTEE	46
Section 13.1 Representations and Warranties of Institutional Trustee	46
Section 13.2 Representations and Warranties of Delaware Trustee	47
Article XIV. MISCELLANEOUS	47
Section 14.1 Notices	47
Section 14.2 Governing Law; Waiver of Jury Trial	48
Section 14.3 Intention of the Parties	49
Section 14.4 Headings	49
Section 14.5 Successors and Assigns	49
Section 14.6 Partial Enforceability	49
Section 14.7 Counterparts	49

---

ANNEXES AND EXHIBITS

ANNEX I Terms of 10.25% Trust Preferred Securities and 10.25% Common Securities

EXHIBIT A-1 Form of Trust Preferred Security Certificate  
EXHIBIT A-2 Form of Common Security Certificate  
EXHIBIT B Specimen of Junior Subordinated Debt Security  
EXHIBIT C Underwriting Agreement

**CROSS-REFERENCE TABLE\***

<u>Section of Trust Indenture Act of 1939, as amended</u>	<u>Section of Declaration of Trust</u>
310(a)	5.3(a)
310(c)	Inapplicable
311(c)	Inapplicable
312(a)	2.2(a)
312(b)	2.2(b)
313	2.3
314(a)	2.4
314(b)	Inapplicable
314(c)	2.5
314(d)	Inapplicable
314(f)	Inapplicable
315(a)	3.9(b)
315(c)	3.9(a)
315(d)	3.9(a)
316(a)	Annex I
316(c)	3.6(e)

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

**AMENDED AND RESTATED DECLARATION OF TRUST**

**OF**

**CAPITAL ONE CAPITAL V**

August 5, 2009

AMENDED AND RESTATED DECLARATION OF TRUST (“Declaration of Trust”) dated and effective as of August 5, 2009, by the Trustees (as defined herein), the Sponsor (as defined herein) and by the holders, from time to time, of undivided beneficial interests in the assets of the Trust to be issued pursuant to this Declaration of Trust;

WHEREAS, the Trustees and the Sponsor established Capital One Capital V (the “Trust”), a trust under the Statutory Trust Act (as defined herein) pursuant to a Declaration of Trust dated as of May 6, 2009 (the “Original Declaration”) and a Certificate of Trust filed with the Secretary of State of the State of Delaware on May 6, 2009, for the sole purpose of issuing and selling certain securities representing undivided beneficial interests in the assets of the Trust and investing the proceeds thereof in certain Junior Subordinated Debt Securities of the Junior Subordinated Debt Securities Issuer;

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

WHEREAS, the parties hereto, by this Declaration of Trust, amend and restate each and every term and provision of the Original Declaration; and

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

**ARTICLE I.**

**INTERPRETATION AND DEFINITIONS**

**SECTION 1.1 Definitions.**

Unless the context otherwise requires:

(a) Capitalized terms used in this Declaration of Trust but not defined in the preamble above have the respective meanings assigned to them in this Section 1.1;

(b) a term defined anywhere in this Declaration of Trust has the same meaning throughout;

(c) all references to “the Declaration of Trust” or “this Declaration of Trust” are to this Declaration of Trust as modified, supplemented or amended from time to time;

(d) all references in this Declaration of Trust to Articles and Sections and Annexes and Exhibits are to Articles and Sections of and Annexes and Exhibits to this Declaration of Trust unless otherwise specified;

(e) a term defined in the Trust Indenture Act has the same meaning when used in this Declaration of Trust unless otherwise defined in this Declaration of Trust or unless the context otherwise requires; and

(f) a reference to the singular includes the plural and vice versa.

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

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

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

“Book Entry Interest”: means a beneficial interest in a Global Certificate, ownership and transfers of which shall be maintained and made through book entries by a Clearing Agency as described in Section 9.4.

“Business Day”: means any day other than a Saturday, Sunday or a day on which banking institutions in the City of New York, New York are permitted or required by any applicable law or executive order to close.

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

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

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

“Closing Date”: means August 5, 2009.

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

“Commission”: means the Securities and Exchange Commission.

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

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

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

“Corporate Trust Office”: means the office of the Institutional Trustee at which the corporate trust business of the Institutional Trustee shall, at any particular time, be principally administered, which office at the date of execution of this Declaration of Trust is located at The Bank of New York Mellon Trust Company, N.A., 2 North LaSalle Street, Suite 1020, Chicago, Illinois 60602, Attention: Corporate Trust Administration, or such other address as the Institutional Trustee may designate from time to time by notice to the Holders and the Sponsor, or the principal corporate trust office of any successor Institutional Trustee (or such other address as such successor Institutional Trustee may designate from time to time by notice to the Holders and the Sponsor).

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

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

“Declaration Default”: in respect of the Securities means an Indenture Event of Default has occurred and is continuing in respect of the Junior Subordinated Debt Securities.

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

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

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

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

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

“Extended Interest Payment Period”: has the meaning set forth in paragraph 2(b) of Annex I.

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

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

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

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

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

“Indemnified Person”: means a Company Indemnified Person or a Fiduciary Indemnified Person.

“Indenture”: means the Indenture dated as of June 6, 2006, between the Junior Subordinated Debt Securities Issuer and the Indenture Trustee, as supplemented by the Fourth Supplemental Indenture dated as of August 5, 2009, between the Junior Subordinated Debt Securities Issuer and the Indenture Trustee, pursuant to which the Junior Subordinated Debt Securities are to be issued.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Paying Agent”: means any paying agent or co-paying agent appointed pursuant to Section 3.16 and shall initially be The Bank of New York Mellon Trust Company, N.A.

“Payment Amount”: has the meaning specified in Section 6.1.

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

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

“Registrar”: has the meaning specified in Section 9.2.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Trust Preferred Securities Guarantee”: means the guarantee agreement dated as of August 5, 2009, of the Sponsor in respect of the Trust Preferred Securities.

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

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

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

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

## ARTICLE II.

### TRUST INDENTURE ACT

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

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

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

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

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

SECTION 2.2 Lists of Holders of Securities.

(a) Each of the Sponsor and the Administrative Trustees on behalf of the Trust shall provide the Institutional Trustee (i) within 14 days after each record date for payment of Distributions, a list, in such form as the Institutional Trustee may reasonably require, of the names and addresses of the Holders of the Securities ("List of Holders") as of such record date, provided, that neither the Sponsor nor the Administrative Trustees on behalf of the Trust shall be obligated to provide such List of Holders at any time the List of Holders does not differ from the most recent List of Holders given to the Institutional Trustee by the Sponsor and the Administrative Trustees on behalf of the Trust, and (ii) at any other time, within 30 days of receipt by the Trust of a written request for a List of Holders as of a date no more than 14 days before such List of Holders is given to the Institutional Trustee. The Institutional Trustee shall preserve, in as current a form as is reasonably practicable, all information contained in Lists of Holders given to it or which it receives in the capacity as Paying Agent (if acting in such capacity), provided, that the Institutional Trustee may destroy any List of Holders previously given to it on receipt of a new List of Holders.

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

SECTION 2.3 Reports by the Institutional Trustee. Within 60 days after August 5 of each year, the Institutional Trustee shall provide to the Holders of the Trust Preferred Securities such reports as are required by § 313 of the Trust Indenture Act, if any, in the form and in the manner provided by § 313 of the Trust Indenture Act. The Institutional Trustee shall also comply with the requirements of § 313(d) of the Trust Indenture Act.

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

SECTION 2.5 Evidence of Compliance with Conditions Precedent. Each of the Sponsor and the Administrative Trustees on behalf of the Trust shall provide to the Institutional Trustee such evidence of compliance with any conditions precedent provided for in this Declaration of Trust that relate to any of the matters set forth in § 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given by an officer pursuant to § 314(c)(1) of the Trust Indenture Act may be given in the form of an Officers' Certificate.

SECTION 2.6 Declaration Defaults; Waiver.

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

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

(ii) is waivable only with the consent of holders of more than a majority in principal amount of the Junior Subordinated Debt Securities (a "Super Majority") affected thereby, only the Holders of at least the proportion in aggregate liquidation amount of the Trust Preferred Securities that the relevant Super Majority represents of the aggregate principal amount of the Junior Subordinated Debt Securities outstanding may waive such Declaration Default in respect of the Trust Preferred Securities under the Declaration of Trust.

The foregoing provisions of this Section 2.6(a) shall be in lieu of § 316(a)(1)(B) of the Trust Indenture Act and such § 316(a)(1)(B) of the Trust Indenture Act is hereby expressly excluded from this Declaration of Trust and the Securities, as permitted by the Trust Indenture Act. Upon such waiver, any such default shall cease to exist, and any Declaration Default with respect to the Trust Preferred Securities arising therefrom shall be deemed to have been cured, for every purpose of this Declaration of Trust, but no such waiver shall extend to any subsequent or other default or a Declaration Default with respect to the Trust Preferred Securities or impair any right consequent thereon. Any waiver by the Holders of the Trust Preferred Securities of a Declaration Default with respect to the Trust Preferred Securities shall also be deemed to constitute a waiver by the Holders of the Common Securities of any such Declaration Default with respect to the Common Securities for all purposes of this Declaration of Trust without any further act, vote, or consent of the Holders of the Common Securities.

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

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

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

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

(c) A waiver of an Indenture Event of Default by the Institutional Trustee at the direction of the Holders of the Trust Preferred Securities, constitutes a waiver of the corresponding Declaration Default. The foregoing provisions of this Section 2.6(c) shall be in lieu of § 316(a)(1)(B) of the Trust Indenture Act and such § 316(a)(1)(B) of the Trust Indenture Act is hereby expressly excluded from this Declaration of Trust and the Securities, as permitted by the Trust Indenture Act.

SECTION 2.7 Declaration Default; Notice.

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

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

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

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

### ARTICLE III.

#### ORGANIZATION

SECTION 3.1 Name. The Trust is named "Capital One Capital V," as such name may be modified from time to time by the Administrative Trustees following written notice to the Institutional Trustee, the Delaware Trustee and the Holders of Securities. The Trust's activities may be conducted under the name of the Trust or any other name deemed advisable by the Administrative Trustees.

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

SECTION 3.3 Purpose. The exclusive purposes and functions of the Trust are (a) to issue and sell Securities and use the proceeds from such sale to acquire the Junior Subordinated Debt Securities, and (b) except as otherwise limited herein, to engage in only those other activities necessary, or incidental thereto. The Trust shall not borrow money, issue debt or reinvest proceeds derived from investments, pledge any of its assets, or otherwise undertake (or permit to be undertaken) any activity that would cause the Trust not to be classified for United States federal income tax purposes as a grantor trust.

SECTION 3.4 Authority. Subject to the limitations provided in this Declaration of Trust and to the specific duties of the Institutional Trustee and the Sponsor, the Administrative Trustees shall have exclusive and complete authority to carry out the purposes of the Trust. An action taken by the Administrative Trustees in accordance with their powers shall constitute the act of and serve to bind the Trust and an action taken by the Institutional Trustee on behalf of the Trust in accordance with its powers shall constitute the act of and serve to bind the Trust. In dealing with the Trustees acting on behalf of the Trust, no Person shall be required to inquire into the authority of the Trustees to bind the Trust. Persons dealing with the Trust are entitled to rely conclusively on the power and authority of the Trustees as set forth in this Declaration of Trust.

SECTION 3.5 Title to Property of the Trust. Except as provided in Section 3.8 with respect to the Junior Subordinated Debt Securities and the Institutional Trustee Account or as otherwise provided in this Declaration of Trust, legal title to all assets of the Trust shall be vested in the Trust. The Holders shall not have legal title to any part of the assets of the Trust, but shall have an undivided beneficial interest in the assets of the Trust.

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

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

(b) in connection with the issue and sale of the Trust Preferred Securities to:

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

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

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

(iv) execute and file with the Commission on behalf of the Trust a registration statement on Form 8-A, prepared by the Sponsor, including any pre-effective or post-effective amendments thereto, relating to the registration of the Trust Preferred Securities under Section 12(b) of the Exchange Act; and

(v) execute and deliver the Underwriting Agreement providing for the sale of the Trust Preferred Securities;

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

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

(e) to establish a record date with respect to all actions to be taken hereunder that require a record date be established, including and with respect to, for the purposes of §316(c) of the Trust Indenture Act, Distributions, voting rights, redemptions and exchanges, and to issue relevant notices to the Holders of Trust Preferred Securities and Holders of Common Securities as to such actions and applicable record dates;

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

(g) to bring or defend, pay, collect, compromise, arbitrate, resort to legal action, or otherwise adjust claims or demands of or against the Trust (“Legal Action”), unless pursuant to Section 3.8(e), the Institutional Trustee has the exclusive power to bring such Legal Action;

(h) to employ or otherwise engage employees and agents (who may be designated as officers with titles) and managers, contractors, advisors, and consultants and pay reasonable compensation for such services;

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

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

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

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

(m) to give prompt written notice to the Holders of the Securities of any notice received from the Junior Subordinated Debt Securities Issuer of its election to defer payments of interest on the Junior Subordinated Debt Securities under the Indenture;

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

(o) to take any action, not inconsistent with this Declaration of Trust or with applicable law, that the Administrative Trustees determine in their discretion to be necessary or desirable in carrying out the activities of the Trust as set out in this Section 3.6, including, but not limited to:

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

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

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

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

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

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

The Administrative Trustees must exercise the powers set forth in this Section 3.6 in a manner that is consistent with the purposes and functions of the Trust set out in Section 3.3, and the Administrative Trustees shall not take any action that is inconsistent with the purposes and functions of the Trust set forth in Section 3.3.

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

Any expenses incurred by the Administrative Trustees pursuant to this Section 3.6 shall be reimbursed by the Junior Subordinated Debt Securities Issuer.

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

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

(i) invest any proceeds received by the Trust from holding the Junior Subordinated Debt Securities, but shall promptly distribute all such proceeds to Holders of Securities pursuant to the terms of this Declaration of Trust and of the Securities;

(ii) acquire any assets other than as expressly provided herein;

(iii) possess Trust property for other than a Trust purpose;

(iv) make any loans or incur any indebtedness;

(v) possess any power or otherwise act in such a way as to vary the Trust assets;

(vi) possess any power or otherwise act in such a way as to vary the terms of the Securities in any way whatsoever (except to the extent expressly authorized in this Declaration of Trust or by the terms of the Securities);

(vii) issue any securities or other evidences of beneficial ownership of, or beneficial interest in, the Trust other than the Securities;

(viii) take any action inconsistent with the status of the Trust as a grantor trust for United States federal income tax purposes;

(ix) other than as provided in this Declaration of Trust or Annex I, (A) direct the time, method and place of exercising any trust or power conferred upon the Indenture Trustee with respect to the Junior Subordinated Debt Securities, (B) waive any past Declaration Default that is waivable under the Indenture, (C) exercise any right to rescind or annul any declaration that the principal of all the Junior Subordinated Debt Securities shall be due and payable or (D) consent to any amendment, modification or termination of the Indenture or the Junior Subordinated Debt Securities where such consent shall be required unless the Trust shall have obtained an opinion of nationally recognized independent tax counsel experienced in such matters to the effect that as a result of such action, the Trust will not fail to be classified as a grantor trust for United States federal income tax purposes; or

(x) revoke any action previously authorized or approved by a vote of the Holders of the Trust Preferred Securities.

SECTION 3.8 Powers and Duties of the Institutional Trustee.

(a) The legal title to the Junior Subordinated Debt Securities shall be owned by and held of record in the name of the Institutional Trustee in trust for the benefit of the Holders of the Securities. The right, title and interest of the Institutional Trustee to the Junior Subordinated Debt Securities shall vest automatically in each Person who may hereafter be appointed as Institutional Trustee in accordance with Section 5.6. Such vesting and cessation of title shall be effective whether or not conveyancing documents with regard to the Junior Subordinated Debt Securities have been executed and delivered.

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

(c) The Institutional Trustee shall:

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

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

(iii) upon written notice of distribution issued by the Administrative Trustees in accordance with the terms of the Securities, engage in such ministerial activities as shall be necessary or appropriate to effect the distribution of the Junior Subordinated Debt Securities to Holders of Securities upon the occurrence of a Tax Event or a Capital Treatment Event, or other specified circumstances pursuant to the terms of the Securities.

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

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

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

(i) the Trust has been completely liquidated and the proceeds of the liquidation distributed to the Holders of Securities pursuant to the terms of the Securities and this Declaration of Trust (including Annex I); or

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

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

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

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

SECTION 3.9 Certain Duties and Responsibilities of the Institutional Trustee.

(a) The Institutional Trustee, before the occurrence of any Declaration Default and after the curing of all Declaration Defaults that may have occurred, shall undertake to perform only such duties as are specifically set forth in this Declaration of Trust and no implied covenants shall be read into this Declaration of Trust against the Institutional Trustee. Subject to any voting right of the Holders under the Securities, if the Institutional Trustee is required to decide between alternative causes of action under this Declaration of Trust, construe ambiguous provisions in this Declaration of Trust or is unsure of the application of any provision of this Declaration of Trust, the Institutional Trustee will take such action as directed by the Sponsor and, if not so directed, shall take such action as it deems necessary. In case a Declaration Default has occurred (that has not been cured or waived pursuant to Section 2.6) of which a Responsible Officer of the Institutional Trustee has actual knowledge, the Institutional Trustee shall exercise such of the rights and powers vested in it by this Declaration of Trust, and use the same degree of care and skill in the exercise of such rights and powers, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

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

(i) prior to the occurrence of a Declaration Default and after the curing or waiving of all such Declaration Defaults that may have occurred:

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

(B) in the absence of bad faith on the part of the Institutional Trustee, the Institutional Trustee may conclusively rely, as to the truth of the statements and the

correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Institutional Trustee and conforming to the requirements of this Declaration of Trust; but in the case of any such certificates or opinions that by any provision hereof are specifically required to be furnished to the Institutional Trustee, the Institutional Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Declaration of Trust (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein, absent manifest error);

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

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

(iv) no provision of this Declaration of Trust shall require the Institutional Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that the repayment of such funds or liability is not reasonably assured to it under the terms of this Declaration of Trust or indemnity reasonably satisfactory to the Institutional Trustee against such risk or liability is not reasonably assured to it;

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

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

(vii) the Institutional Trustee shall not be liable for any interest on any money received by it except as it may otherwise agree with the Sponsor. Money held by the Institutional Trustee need not be segregated from other funds held by it except in relation to the Institutional Trustee Account maintained by the Institutional Trustee pursuant to Section 3.8(c)(i) and except to the extent otherwise required by law; and

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

SECTION 3.10 Certain Rights of Institutional Trustee.

(a) Subject to the provisions of Section 3.9:

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

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

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

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

(v) the Institutional Trustee may consult with counsel or other experts and the advice or opinion of such counsel and experts with respect to legal matters or advice within the scope of such experts' area of expertise shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with such advice or opinion, such counsel may be counsel to the Sponsor or any of its Affiliates, and may include any of its employees. The Institutional Trustee shall have the right at any time to seek instructions concerning the administration of this Declaration of Trust from any court of competent jurisdiction;

(vi) the Institutional Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Declaration of Trust at the request or direction of any Holder, unless such Holder shall have provided to the Institutional Trustee security and indemnity, reasonably satisfactory to the Institutional Trustee, against the costs, expenses (including attorneys' fees and expenses and the expenses of the Institutional Trustee's agents, nominees or custodians) and liabilities that might be incurred by it in complying with such request or direction, including such reasonable advances as may be requested by the Institutional Trustee provided that nothing contained in this Section 3.10(a)(vi) shall be taken to relieve the Institutional Trustee, upon the occurrence of a Declaration Default, of its obligation to exercise the rights and powers vested in it by this Declaration of Trust;

(vii) the Institutional Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Institutional Trustee, in its discretion, may make such reasonable further inquiry or investigation into such facts or matters as it may see fit at the expense of the Junior Subordinated Debt Securities Issuer and shall incur no liability of any kind by reason of such inquiry or investigation;

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

(ix) any action taken by the Institutional Trustee or its agents hereunder shall bind the Trust and the Holders of the Securities, and the signature of the Institutional Trustee or its agents alone shall be sufficient and effective to perform any such action and no third party shall be required to inquire as to the authority of the Institutional Trustee to so act or as to its compliance with any of the terms and provisions of this Declaration of Trust, both of which shall be conclusively evidenced by the Institutional Trustee's or its agent's taking such action;

(x) whenever in the administration of this Declaration of Trust the Institutional Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder, the Institutional Trustee (A) may request instructions from the Holders of the Securities which instructions may only be given by the Holders of the same proportion in liquidation amount of the Securities as would be entitled to direct the Institutional Trustee under the terms of the Securities in respect of such remedy, right or action, (B) may refrain from enforcing such remedy or right or taking such other action until such instructions are received, and (C) shall be protected in conclusively relying on or acting in or accordance with such instructions;

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

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

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

(xiv) in no event shall the Institutional 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 Institutional 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; and

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

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

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

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

SECTION 3.13 Not Responsible for Recitals or Issuance of Securities. The recitals contained in this Declaration of Trust and the Securities shall be taken as the statements of the Sponsor, and the Trustees do not assume any responsibility for their correctness. The Trustees make no representations as to the value or condition of the property of the Trust or any part thereof. The Trustees make no representations as to the validity or sufficiency of this Declaration of Trust or the Securities.

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

SECTION 3.15 Mergers.

(a) The Trust may not consolidate, amalgamate, merge with or into, or be replaced by, or convey, transfer or lease its properties and assets substantially as an entirety to any corporation or other body, except as described in Section 3.15(b) and (c), and Section 3 of Annex I.

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

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

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

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

(ii) the Junior Subordinated Debt Securities Issuer expressly acknowledges a trustee of the Successor Entity that possesses the same powers and duties as the Institutional Trustee in its capacity as the Holder of the Junior Subordinated Debt Securities;

(iii) immediately following such merger, consolidation, amalgamation or replacement, the Trust Preferred Securities of the Successor Entity or any Successor Securities are listed, or any Successor Securities will be listed upon notification of issuance, on any national securities exchange or with any other organization on which the Trust Preferred Securities are then listed or quoted;

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

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

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

(vii) prior to such merger, consolidation, amalgamation or replacement, the Trust has received an opinion of a nationally recognized independent counsel to the Trust experienced in such matters to the effect that:

(A) such merger, consolidation, amalgamation or replacement does not adversely affect the rights, preferences and privileges of the Holders of the Securities (including any Successor Securities) in any material respect (other than with respect to any dilution of the Holders' interest in the new entity); and

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

(C) following such merger, consolidation, amalgamation or replacement, the Trust (or the Successor Entity) will continue to be classified as a grantor trust for United States federal income tax purposes; and

(viii) the Sponsor or any permitted successor or assignee owns all of the Common Securities and guarantees the obligations of such Successor Entity under the Successor Securities at least to the extent provided by the Trust Preferred Securities Guarantee and such Successor Entity expressly assumes all of the obligations of the Trust with respect to the Trustees.

(c) Notwithstanding Section 3.15(b), the Trust shall not, except with the consent of Holders of 100% in liquidation amount of the Securities, consolidate, amalgamate, merge with or into, or be replaced by any other entity or permit any other entity to consolidate, amalgamate, merge with or into, or replace it, if in the opinion of a nationally recognized independent tax counsel experienced in such matters, such consolidation, amalgamation, merger or replacement would cause the Trust or the Successor Entity to be classified as other than a grantor trust for United States federal income tax purposes.

**SECTION 3.16 Paying Agent.** The initial Paying Agent shall be The Bank of New York Mellon Trust Company, N.A. and any co-paying agent chosen by the Paying Agent and acceptable to the Administrative Trustees and the Sponsor. The Paying Agent shall make Distributions and shall report the amounts of such Distributions to the Institutional Trustee and the Administrative Trustees. Any Person acting as Paying Agent shall be permitted to resign as Paying Agent upon 30 days' written notice to the Administrative Trustees, the Institutional Trustee and the Sponsor. In the event that The Bank of New York Mellon Trust Company, N.A. shall no longer be the Paying Agent or a successor Paying Agent shall resign or its authority to act be revoked, the Administrative Trustees shall appoint a successor that is acceptable to the Institutional Trustee and the Sponsor to act as Paying Agent (which shall be a bank or trust company). The Administrative Trustees shall cause such successor Paying Agent or any additional Paying Agent appointed by the Administrative Trustees to execute and deliver to the Trustees an instrument in which such successor Paying Agent or additional Paying Agent shall agree with the Trustees that as Paying Agent, such successor Paying Agent or additional Paying Agent will hold all sums, if any, held by it for payment to the Holders in trust for the benefit of the Holders entitled thereto until such sums shall be paid to such Holders. The Paying Agent

shall return all unclaimed funds to the Institutional Trustee and upon resignation or removal of a Paying Agent such Paying Agent shall also return all funds in its possession to the Institutional Trustee. Any reference in this Agreement to the Paying Agent shall include any co-paying agent unless the context requires otherwise.

#### ARTICLE IV.

##### SPONSOR

SECTION 4.1 Sponsor's Purchase of Common Securities. On the Closing Date, the Sponsor will purchase all of the Common Securities issued by the Trust in an amount equal to \$9,884.60 or more of the capital of the Trust, at the same time as the Trust Preferred Securities are sold.

SECTION 4.2 Responsibilities of the Sponsor. In connection with the issue and sale of the Trust Preferred Securities, the Sponsor shall have the exclusive right and responsibility to engage in the following activities (and any actions taken by the Sponsor in furtherance of the following prior to the date hereof are hereby ratified and confirmed in all respects):

(a) to prepare for filing by the Trust with the Commission a registration statement on Form S-3 or on another appropriate form, or a registration statement under Rule 462(b) of the Securities Act, including any pre-effective or post-effective amendments thereto, relating to the registration under the Securities Act of the Trust Preferred Securities;

(b) to determine the States in which to take appropriate action to qualify or register for sale all or part of the Trust Preferred Securities and to do any and all such acts, other than actions which must be taken by the Trust, and advise the Trust of actions it must take, and prepare for execution and filing any documents to be executed and filed by the Trust, as the Sponsor deems necessary or advisable in order to comply with the applicable laws of any such States;

(c) to prepare for filing by the Trust an application to the New York Stock Exchange, any other national stock exchange or The Nasdaq Stock Market for listing upon notice of issuance of any Trust Preferred Securities;

(d) to prepare for filing by the Trust with the Commission a registration statement on Form 8-A, including any pre-effective or post-effective amendments thereto, relating to the registration of the Trust Preferred Securities under Section 12(b) of the Exchange Act, including any amendments thereto; and

(e) to negotiate the terms of the Underwriting Agreement providing for the sale of the Trust Preferred Securities.

##### SECTION 4.3 Exchanges by the Sponsor.

(a) If at any time the Sponsor or any of its Affiliates (in either case, a "Sponsor Affiliated Holder") is the Holder of any Trust Preferred Securities, such Sponsor Affiliated Holder shall have the right to deliver to the Institutional Trustee all or such portion of its Trust

Preferred Securities as it elects and receive, in exchange therefor, Junior Subordinated Debt Securities in an aggregate principal amount equal to the stated liquidation amount of, with an interest rate identical to the distribution rate of, and accrued and unpaid interest equal to accumulated and unpaid Distributions on, the Trust Preferred Securities. Such election (i) shall be exercisable effective by such Sponsor Affiliated Holder delivering to the Institutional Trustee a written notice of such election (A) specifying the liquidation amount of the Trust Preferred Securities with respect to which such election is being made and (B) the date on which such exchange shall occur, which date shall not be less than three (3) Business Days after the receipt by the Institutional Trustee of such election notice, and which may be any date other than the record date for any Distribution or a date from such record date to and including the Distribution Date for such Distribution and (ii) shall be conditioned upon such Sponsor Affiliated Holder having delivered or caused to be delivered to the Institutional Trustee or its designee the Trust Preferred Securities which are the subject of such election by 10:00 A.M. New York City time, on the date on which such exchange is to occur. After the exchange, such Trust Preferred Securities will be cancelled and will no longer be deemed to be outstanding and all rights of the Sponsor or its Affiliate(s) with respect to such Trust Preferred Securities will cease, including accumulated but unpaid Distributions thereon. In the event such Trust Preferred Securities are Book Entry Interests, upon such exchange the Institutional Trustee, in its capacity as Registrar, shall cause an annotation to be made on the related Global Certificate or certificates evidencing such Book-Entry Interests to evidence the reduction in the liquidation amount thereof resulting from such cancellation.

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

## ARTICLE V.

### TRUSTEES

SECTION 5.1 Number of Trustees. The number of Trustees initially shall be four, and:

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

(b) after the issuance of any Securities, the number of Trustees may be increased or decreased by vote of the Holders of a Majority in liquidation amount of the Common Securities voting as a class at a meeting of the Holders of the Common Securities,

*provided, however*, that the number of Trustees shall in no event be less than two; provided further that (1) one Trustee, in the case of a natural person, shall be a person who is a resident of the State of Delaware or that, if not a natural person, shall be an entity which has its principal place of business in the State of Delaware (the "Delaware Trustee"); (2) there shall be at least

one Trustee who is an employee or officer of, or is affiliated with the Sponsor (an “Administrative Trustee”); and (3) one Trustee shall be the Institutional Trustee for so long as this Declaration of Trust is required to qualify as an indenture under the Trust Indenture Act, and such Trustee may also serve as Delaware Trustee if it meets the applicable requirements.

SECTION 5.2 Delaware Trustee. If required by the Statutory Trust Act, the Delaware Trustee shall be:

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

(b) if not a natural person, an entity which has its principal place of business in the State of Delaware, and otherwise meets the requirements of applicable law,

provided, that if the Institutional Trustee has its principal place of business in the State of Delaware and otherwise meets the requirements of applicable law, then the Institutional Trustee shall also be the Delaware Trustee and Section 3.11 shall have no application.

SECTION 5.3 Institutional Trustee; Eligibility.

(a) There shall at all times be one Trustee that shall act as Institutional Trustee which shall:

(i) not be an Affiliate of the Sponsor;

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

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

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

(c) If the Institutional Trustee has or shall acquire any “conflicting interest” within the meaning of § 310(b) of the Trust Indenture Act, the Institutional Trustee and the Holders of the Common Securities (as if such Holders were the obligor referred to in § 310(b) of the Trust Indenture Act) shall in all respects comply with the provisions of § 310(b) of the Trust Indenture Act.

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

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

SECTION 5.4 Qualifications of Administrative Trustees and Delaware Trustee Generally. Each Administrative Trustee and the Delaware Trustee (unless the Institutional Trustee also acts as Delaware Trustee) shall be either a natural person who is at least 21 years of age or a legal entity that shall act through one or more Authorized Officers.

SECTION 5.5 Initial Trustees; Additional Powers of Administrative Trustees.

(a) The initial Administrative Trustees shall be:

Thomas A. Feil  
Stephen Linehan

The initial Delaware Trustee shall be:

BNY Mellon Trust of Delaware  
White Clay Center,  
Route 273  
Newark, Delaware 19711

The initial Institutional Trustee shall be:

The Bank of New York Mellon Trust Company, N.A.  
2 North LaSalle Street, Suite 1020  
Chicago, Illinois 60602

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

(c) Except as otherwise required by the Statutory Trust Act or applicable law, any Administrative Trustee is authorized to execute on behalf of the Trust any documents which the Administrative Trustees have the power and authority to cause the Trust to execute pursuant to Section 3.6, provided, that the registration statement referred to in Section 3.6, including any amendments thereto, shall be signed by all of the Administrative Trustees.

(d) An Administrative Trustee may, by power of attorney consistent with applicable law, delegate to any other natural person over the age of 21 his or her power for the purposes of signing any documents which the Administrative Trustees have power and authority to cause the Trust to execute pursuant to Section 3.6.

SECTION 5.6 Appointment, Removal and Resignation of Trustees.

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

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

(ii) in the case of the Administrative Trustees, after the issuance of any Securities, by vote of the Holders of a Majority in liquidation amount of the Common Securities voting as a class at a meeting of the Holders of the Common Securities;

(iii) in the case of the Institutional Trustee and the Delaware Trustee, unless a Declaration Default shall have occurred and be continuing after the issuance of any Securities, by a vote of the Holders of a Majority in liquidation amount of the Common Securities voting as a class at a meeting of the Holders of the Common Securities; and

(iv) in the case of the Institutional Trustee and the Delaware Trustee, if a Declaration Default shall have occurred and be continuing after the issuance of the Securities, by a vote of the Holders of a Majority in liquidation amount of the Trust Preferred Securities voting as a class at a meeting of the Holders of the Trust Preferred Securities.

(b)(i) The Trustee that acts as Institutional Trustee shall not be removed in accordance with Section 5.6(a) until a successor Trustee possessing the qualifications to act as Institutional Trustee under Section 5.3 (a "Successor Institutional Trustee") has been appointed and has accepted such appointment by written instrument executed by such Successor Institutional Trustee and delivered to the Administrative Trustees and the Sponsor; and

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

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

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

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

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

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

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

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

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

SECTION 5.7 Vacancies among Trustees. If a Trustee ceases to hold office for any reason and the number of Trustees is not reduced pursuant to Section 5.1, or if the number of Trustees is increased pursuant to Section 5.1, a vacancy shall occur. A resolution certifying the existence of such vacancy by the Administrative Trustees or, if there are more than two, a majority of the Administrative Trustees shall be conclusive evidence of the existence of such vacancy. The vacancy shall be filled with a Trustee appointed in accordance with Section 5.6.

SECTION 5.8 Effect of Vacancies. The death, resignation, retirement, removal, bankruptcy, dissolution, liquidation, incompetence or incapacity to perform the duties of a Trustee shall not operate to dissolve, terminate or annul the Trust. Whenever a vacancy in the number of Administrative Trustees shall occur, until such vacancy is filled by the appointment of an Administrative Trustee in accordance with Section 5.6, the Administrative Trustees in office, regardless of their number, shall have all the powers granted to the Administrative Trustees and shall discharge all the duties imposed upon the Administrative Trustees by this Declaration of Trust.

SECTION 5.9 Meetings. If there is more than one Administrative Trustee, meetings of the Administrative Trustees shall be held from time to time upon the call of any Administrative Trustee. Regular meetings of the Administrative Trustees may be held at a time and place fixed by resolution of the Administrative Trustees. Notice of any in-person meetings of the Administrative Trustees shall be hand delivered or otherwise delivered in writing (including by facsimile, with a hard copy by overnight courier) not less than 48 hours before such meeting. Notice of any telephonic meetings of the Administrative Trustees or any committee thereof shall be hand delivered or otherwise delivered in writing (including by facsimile, with a hard copy by overnight courier) not less than 24 hours before a meeting. Notices shall contain a brief statement of the time, place and anticipated purposes of the meeting. The presence (whether in person or by telephone) of an Administrative Trustee at a meeting shall constitute a waiver of notice of such meeting except where an Administrative Trustee attends a meeting for the express purpose of objecting to the transaction of any activity on the ground that the meeting has not been lawfully called or convened. Unless provided otherwise in this Declaration of Trust, any action of the Administrative Trustees may be taken at a meeting by vote of a majority of the Administrative Trustees present (whether in person or by telephone) and eligible to vote with respect to such matter, provided that a Quorum is present, or without a meeting by the unanimous written consent of the Administrative Trustees. In the event there is only one Administrative Trustee, any and all action of such Administrative Trustee shall be evidenced by a written consent of such Administrative Trustee.

SECTION 5.10 Delegation of Power.

(a) Any Administrative Trustee may, by power of attorney consistent with applicable law, delegate to any other natural person over the age of 21 his or her power for the purpose of executing any documents contemplated in Section 3.6, including any registration statement or amendment thereto filed with the Commission, or making any other governmental filing.

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

SECTION 5.11 Merger, Conversion, Consolidation or Succession to Business. Any corporation into which the Institutional Trustee or the Delaware Trustee, as the case may be, may be merged or converted or with which either may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Institutional Trustee or the Delaware Trustee, as the case may be, shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Institutional Trustee or the Delaware Trustee, as the case may be, shall be the successor of the Institutional Trustee or the Delaware Trustee, as the case may be, hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

ARTICLE VI.

DISTRIBUTIONS

SECTION 6.1 Distributions. Holders shall receive Distributions (as defined herein) in accordance with the applicable terms of the relevant Holder's Securities. Distributions shall be made on the Trust Preferred Securities and the Common Securities in accordance with the preferences set forth in their respective terms. If and to the extent that the Junior Subordinated Debt Securities Issuer makes a payment of interest (including Compounded Interest (as defined in the Indenture) and Additional Interest (as defined in the Indenture)), premium and/or principal on the Junior Subordinated Debt Securities held by the Institutional Trustee (the amount of any such payment being a "Payment Amount"), the Institutional Trustee shall and is directed to make a distribution (a "Distribution") of the Payment Amount to Holders.

ARTICLE VII.

ISSUANCE OF SECURITIES

SECTION 7.1 General Provisions Regarding Securities.

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

(b) The Certificates shall be signed on behalf of the Trust by an Administrative Trustee. Such signature shall be the manual or facsimile signature of any present or any future Administrative Trustee. In case any Administrative Trustee of the Trust who shall have signed any of the Securities shall cease to be such Administrative Trustee before the Certificates so signed shall be delivered by the Trust, such Certificates nevertheless may be delivered as though the person who signed such Certificates had not ceased to be such Administrative Trustee; and any Certificate may be signed on behalf of the Trust by such persons who, at the actual date of execution of such Security, shall be the Administrative Trustees of the Trust, although at the date of the execution and delivery of the Declaration of Trust any such person was not such an Administrative Trustee. Certificates shall be printed, lithographed or engraved or may be produced in any other manner as is reasonably acceptable to the Administrative Trustees, as evidenced by their execution thereof, and may have such letters, numbers or other marks of identification or designation and such legends or endorsements as the Administrative Trustees may deem appropriate, or as may be required to comply with any law or with any rule or regulation of any stock exchange on which Securities may be listed, or to conform to usage. The Securities shall not be valid until authenticated by the manual signature of an authorized signatory of the Institutional Trustee. Such signature shall be conclusive evidence that the Security has been authenticated under this Declaration of Trust. Upon a written order of the Trust signed by an Administrative Trustee, the Institutional Trustee shall authenticate the Securities for original issue. The aggregate number of Securities outstanding at any time shall not exceed the number set forth in Section 7.2.

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

(d) Upon issuance of the Securities as provided in this Declaration of Trust, the Securities so issued shall be deemed to be validly issued, fully paid and non-assessable, and each Holder thereof shall be entitled to the benefits provided by this Declaration of Trust.

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

**SECTION 7.2 Issuance of Securities; Purchase of Junior Subordinated Debt Securities.**

(a) The Trust shall be authorized to issue the Trust Preferred Securities and the Common Securities set forth in Section 1 of Annex I hereto.

(b) Contemporaneously with the execution and delivery of this Declaration of Trust, an Administrative Trustee, on behalf of the Trust, shall execute in accordance with Section 7.1(b) and the Institutional Trustee shall, pursuant to Section 7.1(b), authenticate and deliver to the underwriters named in the Underwriting Agreement Trust Preferred Security Certificates, registered in the name of the nominee of the initial Clearing Agency, in an aggregate amount of 1,000,000 Trust Preferred Securities having an aggregate liquidation amount of \$1,000,000,000, against receipt of an aggregate purchase price of such Trust Preferred Securities of \$988,460,000, by the Trust.

(c) Contemporaneously with the execution and delivery of this Declaration of Trust, an Administrative Trustee, on behalf of the Trust, shall execute in accordance with Section 7.1(b) and the Institutional Trustee shall, pursuant to Section 7.1(b), authenticate and deliver to the Sponsor, in its capacity as the Holder of the Common Securities, Common Security Certificates registered in the name of such Holder, evidencing 10 Common Securities having an aggregate liquidation amount of \$10,000, against receipt of the aggregate purchase price of such Common Securities of \$9,884.60, by the Institutional Trustee. Contemporaneously therewith and with the issuance of Trust Preferred Securities as set forth in Section 7.2(b), an Administrative Trustee, on behalf of the Trust, shall subscribe to and purchase from the Junior Subordinated Debt Securities Issuer Junior Subordinated Debt Securities, registered in the name of the Institutional Trustee and having an aggregate principal amount equal to \$1,000,010,000, and, in satisfaction of the purchase price for such Junior Subordinated Debt Securities, the Trust shall deliver to the Junior Subordinated Debt Securities Issuer the sum of \$988,469,884.60 (being the sum of the amounts delivered to the Trust pursuant to the first sentence of Section 7.2(b) above and the first sentence of this Section 7.2(c)).

ARTICLE VIII.

TERMINATION OF TRUST

SECTION 8.1 Termination of Trust.

(a) The Trust shall dissolve:

(i) upon the bankruptcy of any Holder of the Common Securities or the Sponsor;

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

(iii) upon the entry of a decree of a judicial dissolution of any Holder of the Common Securities, the Sponsor or the Trust;

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

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

(vi) before the issuance of any Securities, with the consent of all of the Administrative Trustees and the Sponsor; or

(vii) upon the expiration of the term of the Trust set forth in Section 3.14.

(b) As soon as is practicable after the completion of the winding up of the Trust, an Administrative Trustee shall file a certificate of cancellation with the Secretary of State of the State of Delaware.

(c) The provisions of Section 3.9 and Article X shall survive the termination of the Trust.

ARTICLE IX.

TRANSFER OF INTERESTS

SECTION 9.1 Transfer of Securities.

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

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

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

- (i) the Trust would not be classified for United States federal income tax purposes as a grantor trust; and
- (ii) the Trust would be an Investment Company or the transferee would become an Investment Company.

SECTION 9.2 Transfer of Certificates. The Administrative Trustees shall keep or cause to be kept a register for registering the Certificates and transfers and exchanges of the Certificates, in which the Administrative Trustees or the transfer agent and registrar designated by the Administrative Trustees (the "Registrar") shall provide for the registration of Certificates and of transfers of Certificates, which will be effected without charge but only upon payment in respect of any tax or other government charges that may be imposed in relation to it. Upon surrender for registration of transfer of any Certificate, the Registrar shall cause one or more new Certificates to be issued in the name of the designated transferee or transferees. Every Certificate surrendered for registration of transfer shall be accompanied by a written instrument of transfer in form satisfactory to the Registrar duly executed by the Holder or such Holder's attorney duly authorized in writing. Each Certificate surrendered for registration of transfer shall be canceled by the Registrar. A transferee of a Certificate shall be entitled to the rights and subject to the obligations of a Holder hereunder upon the receipt by such transferee of a Certificate. By acceptance of a Certificate, each transferee shall be deemed to have agreed to be bound by this Declaration of Trust. The Institutional Trustee shall be the initial Registrar.

SECTION 9.3 Deemed Security Holders. The Trustees may treat the Person in whose name any Certificate shall be registered on the books and records of the Trust as the sole holder of such Certificate and of the Securities represented by such Certificate for purposes of receiving Distributions and for all other purposes whatsoever and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such Certificate or in the Securities represented by such Certificate on the part of any Person, whether or not the Trust shall have actual or other notice thereof.

SECTION 9.4 Book Entry Interests. Unless otherwise specified in the terms of the Trust Preferred Securities, the Trust Preferred Securities Certificates, on original issuance, will be issued in the form of one or more, fully registered, global Trust Preferred Security Certificates (each a “Global Certificate”), to be delivered to DTC, the initial Clearing Agency, by, or on behalf of, the Trust. Such Global Certificates shall initially be registered on the books and records of the Trust in the name of Cede & Co., the nominee of DTC, and no Trust Preferred Security Beneficial Owner will receive a definitive Trust Preferred Security Certificate representing such Trust Preferred Security Beneficial Owner’s interests in such Global Certificates, except as provided in Section 9.7. Unless and until definitive, fully registered Trust Preferred Security Certificates (the “Definitive Trust Preferred Security Certificates”) have been issued to the Trust Preferred Security Beneficial Owners pursuant to Section 9.7:

(a) the provisions of this Section 9.4 shall be in full force and effect;

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

(c) to the extent that the provisions of this Section 9.4 conflict with any other provisions of this Declaration of Trust, the provisions of this Section 9.4 shall control; and

(d) the rights of the Trust Preferred Security Beneficial Owners shall be exercised only through the Clearing Agency and shall be limited to those established by law and agreements between such Trust Preferred Security Beneficial Owners and the Clearing Agency and/or the Clearing Agency Participants and receive and transmit payments of Distributions on the Global Certificates to such Clearing Agency Participants. DTC will make book entry transfers among the Clearing Agency Participants.

SECTION 9.5 Notices to Clearing Agency. Whenever a notice or other communication to the Trust Preferred Security Holders is required under this Declaration of Trust, unless and until Definitive Trust Preferred Security Certificates shall have been issued to the Trust Preferred Security Beneficial Owners pursuant to Section 9.7, the Administrative Trustees shall give all such notices and communications specified herein to be given to the Trust Preferred Security Holders to the Clearing Agency, and shall have no notice obligations to the Trust Preferred Security Beneficial Owners.

SECTION 9.6 Appointment of Successor Clearing Agency. If any Clearing Agency elects to discontinue its services as a securities depository with respect to the Trust Preferred Securities, the Administrative Trustees may, in their sole discretion, appoint a successor Clearing Agency with respect to such Trust Preferred Securities.

SECTION 9.7 Definitive Trust Preferred Security Certificates. If

(a) a Clearing Agency elects to discontinue its services as a securities depository with respect to the Trust Preferred Securities and a successor Clearing Agency is not appointed within 90 days after such discontinuance pursuant to Section 9.6; or

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

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

(ii) upon surrender of the Global Certificates by the Clearing Agency, accompanied by registration instructions, the Administrative Trustees shall cause Definitive Certificates to be delivered to Trust Preferred Security Beneficial Owners in accordance with the instructions of the Clearing Agency. Neither the Trustees nor the Trust shall be liable for any delay in delivery of such instructions and each of them may conclusively rely on and shall be protected in relying on, said instructions of the Clearing Agency. The Definitive Trust Preferred Security Certificates shall be printed, lithographed or engraved or may be produced in any other manner as is reasonably acceptable to the Administrative Trustees, as evidenced by their execution thereof, and may have such letters, numbers or other marks of identification or designation and such legends or endorsements as the Administrative Trustees may deem appropriate, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange on which Trust Preferred Securities may be listed, or to conform to usage.

SECTION 9.8 Mutilated, Destroyed, Lost or Stolen Certificates. If:

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

(b) there shall be delivered to the Administrative Trustees such security or indemnity as may be required by them to keep each of them harmless,

then, in the absence of notice that such Certificate shall have been acquired by a bona fide or protected purchaser, any Administrative Trustee on behalf of the Trust shall execute and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Certificate, a new Certificate of like denomination. In connection with the issuance of any new Certificate under this Section 9.8, the Administrative Trustees may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith. Any duplicate Certificate issued pursuant to this Section shall constitute conclusive evidence of an ownership interest in the relevant Securities, as if originally issued, whether or not the lost, stolen or destroyed Certificate shall be found at any time.

LIMITATION OF LIABILITY OF HOLDERS OF  
SECURITIES, TRUSTEES OR OTHERS

SECTION 10.1 Liability.

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

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

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

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

(c) Pursuant to § 3803(a) of the Statutory Trust Act, the Holders of the Trust Preferred Securities shall be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware.

SECTION 10.2 Exculpation.

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

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

**SECTION 10.3 Fiduciary Duty.**

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

(b) Unless otherwise expressly provided herein:

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

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

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

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

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

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

**SECTION 10.4 Indemnification.**

(a)(i) The Junior Subordinated Debt Securities Issuer shall indemnify, to the full extent permitted by law, any Company Indemnified Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Trust) by reason of the fact that he is or was a Company Indemnified Person against expenses

(including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Trust, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the Company Indemnified Person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Trust, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(ii) The Junior Subordinated Debt Securities Issuer shall indemnify, to the full extent permitted by law, any Company Indemnified Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Trust to procure a judgment in its favor by reason of the fact that he is or was a Company Indemnified Person against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Trust and except that no such indemnification shall be made in respect of any claim, issue or matter as to which such Company Indemnified Person shall have been adjudged to be liable to the Trust unless and only to the extent that the Court of Chancery of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such Court of Chancery or such other court shall deem proper.

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

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

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

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

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

(viii) For purposes of this Section 10.4(a), references to "the Trust" shall include, in addition to the resulting or surviving entity, any constituent entity (including any constituent of a constituent) absorbed in a consolidation or merger, so that any person who is or was a director, trustee, officer or employee of such constituent entity, or is or was serving at the request of such constituent entity as a director, trustee, officer,

employee or agent of another entity, shall stand in the same position under the provisions of this Section 10.4(a) with respect to the resulting or surviving entity as he would have with respect to such constituent entity if its separate existence had continued.

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

(b) The Junior Subordinated Debt Securities Issuer agrees to indemnify the (i) Institutional Trustee, (ii) the Delaware Trustee, (iii) any Affiliate of the Institutional Trustee and the Delaware Trustee, and (iv) any officers, directors, shareholders, members, partners, employees, representatives, custodians, nominees or agents of the Institutional Trustee and the Delaware Trustee (each of the Persons in (i) through (iv) being referred to as a "Fiduciary Indemnified Person") for, and to hold each Fiduciary Indemnified Person harmless against, any loss, liability, claim, damage or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses (including reasonable legal fees and expenses) of defending itself against or investigating any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. The obligation to indemnify as set forth in this Section 10.4(b) shall survive the resignation or removal of the Institutional Trustee or the Delaware Trustee, as the case may be, and the satisfaction and discharge of this Declaration of Trust.

SECTION 10.5 Outside Businesses. Any Covered Person, the Sponsor, the Delaware Trustee and the Institutional Trustee (subject to Section 5.3(c)) may engage in or possess an interest in other business ventures of any nature or description, independently or with others, similar or dissimilar to the business of the Trust, and the Trust and the Holders of Securities shall have no rights by virtue of this Declaration of Trust in and to such independent ventures or the income or profits derived therefrom, and the pursuit of any such venture, even if competitive with the business of the Trust, shall not be deemed wrongful or improper or the breach of any duty at law, in equity or otherwise. No Covered Person, the Sponsor, the Delaware Trustee, or the Institutional Trustee shall be obligated to present any particular investment or other opportunity to the Trust even if such opportunity is of a character that, if presented to the Trust, could be taken by the Trust, and any Covered Person, the Sponsor, the Delaware Trustee and the Institutional Trustee shall have the right to take for its own account (individually or as a partner or fiduciary) or to recommend to others any such particular investment or other opportunity. Any Covered Person, the Delaware Trustee and the Institutional Trustee may engage or be interested in any financial or other transaction with the Sponsor or any Affiliate of the Sponsor, or may act as depositary for, trustee or agent for, or act on any committee or body of holders of, securities or other obligations of the Sponsor or its Affiliates.

ARTICLE XI.

ACCOUNTING

SECTION 11.1 Fiscal Year. The fiscal year (“Fiscal Year”) of the Trust shall be the calendar year, or such other year as is required by the Code.

SECTION 11.2 Certain Accounting Matters.

(a) At all times during the existence of the Trust, the Administrative Trustees shall keep, or cause to be kept, full books of account, records and supporting documents, which shall reflect in reasonable detail, each transaction of the Trust. The books of account shall be maintained on the accrual method of accounting, in accordance with generally accepted accounting principles, consistently applied. The Trust shall use the accrual method of accounting for United States federal income tax purposes.

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

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

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

SECTION 11.3 Banking. The Trust shall maintain one or more bank accounts in the name and for the sole benefit of the Trust; provided, however, that all payments of funds in respect of the Junior Subordinated Debt Securities held by the Institutional Trustee shall be made directly to the Institutional Trustee Account and no other funds of the Trust shall be deposited in the Institutional Trustee Account. The sole signatories for such accounts shall be designated by the Administrative Trustees; provided, however, that the Institutional Trustee shall designate the signatories for the Institutional Trustee Account.

SECTION 11.4 Withholding. The Trust and the Administrative Trustees shall comply with all withholding requirements under United States federal, state and local law. The Trust shall request, and the Holders shall provide to the Trust, such forms or certificates as are necessary to establish an exemption from withholding with respect to each Holder, and any

representations and forms as shall reasonably be requested by the Trust to assist it in determining the extent of, and in fulfilling, its withholding obligations. The Administrative Trustees shall file required forms with applicable jurisdictions and, unless an exemption from withholding is properly established by a Holder, shall remit amounts withheld with respect to the Holder to applicable jurisdictions. To the extent that the Trust is required to withhold and pay over any amounts to any authority with respect to distributions or allocations to any Holder, the amount withheld shall be deemed to be a distribution in the amount of the withholding to the Holder. In the event of any claimed overwithholding, Holders shall be limited to an action against the applicable jurisdiction. If the amount required to be withheld was not withheld from actual Distributions made, the Trust may reduce subsequent Distributions by the amount of such withholding.

## ARTICLE XII.

### AMENDMENTS AND MEETINGS

#### SECTION 12.1 Amendments.

(a) Except as otherwise provided in this Declaration of Trust or by any applicable terms of the Securities, this Declaration of Trust may only be amended by a written instrument approved and executed by:

- (i) the Administrative Trustees (or, if there are more than two Administrative Trustees a majority of the Administrative Trustees);
- (ii) if the amendment affects the rights, powers, duties, obligations or immunities of the Institutional Trustee, the Institutional Trustee; and
- (iii) if the amendment affects the rights, powers, duties, obligations or immunities of the Delaware Trustee, the Delaware Trustee;

(b) no amendment shall be made, and any such purported amendment shall be void and ineffective:

(i) unless, in the case of any proposed amendment, the Institutional Trustee (and the Delaware Trustee to the extent it is required to execute or consent to any such amendment) shall have first received an Officers' Certificate from each of the Trust and the Sponsor that such amendment is permitted by, and conforms to, the terms of this Declaration of Trust (including the terms of the Securities);

(ii) unless, in the case of any proposed amendment which affects the rights, powers, duties, obligations or immunities of the Institutional Trustee, the Institutional Trustee shall have first received:

- (A) an Officers' Certificate from each of the Trust and the Sponsor that such amendment is permitted by, and conforms to, the terms of this Declaration of Trust (including the terms of the Securities); and

(B) an opinion of counsel (who may be counsel to the Sponsor or the Trust) that such amendment is permitted by, and conforms to, the terms of this Declaration of Trust (including the terms of the Securities); and

(iii) to the extent the result of such amendment would be to:

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

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

(C) cause the Trust to be deemed to be an Investment Company required to be registered under the Investment Company Act.

(c) at such time after the Trust has issued any Securities that remain outstanding, any amendment that would materially and adversely affect the rights, privileges or preferences of any Holder of Securities may be effected only with such additional requirements as may be set forth in the terms of such Securities;

(d) Section 9.1(c) and this Section 12.1 shall not be amended without the consent of all of the Holders of the Securities;

(e) Article IV shall not be amended without the consent of the Holders of a Majority in liquidation amount of the Common Securities;

(f) the rights of the Holders of the Common Securities under Article V to increase or decrease the number of, and appoint and remove Trustees shall not be amended without the consent of the Holders of a Majority in liquidation amount of the Common Securities; and

(g) subject to Section 12.1(c), this Declaration of Trust may be amended without the consent of the Holders of the Securities to:

(i) cure any ambiguity, correct or supplement any provisions in this Declaration of Trust that may be defective or inconsistent with any other provision, or to make any other provisions with respect to matters or questions arising under this Declaration of Trust, which may not be inconsistent with the other provisions of this Declaration of Trust;

(ii) modify, eliminate or add to any provisions of this Declaration of Trust to such extent as shall be necessary to ensure that the Trust will be classified for United States federal income tax purposes as a grantor trust at all times that any Securities are outstanding, to ensure that the Trust will not be required to register as an "investment company" under the Investment Company Act or to ensure the treatment of the Trust Preferred Securities as Tier 1 regulatory capital of the Sponsor under prevailing Federal Reserve Board rules and regulations;

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

(iv) maintain the qualification of this Declaration of Trust under the Trust Indenture Act; and

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

SECTION 12.2 Meetings of the Holders of Securities; Action by Written Consent.

(a) Meetings of the Holders of any class of Securities may be called at any time by the Administrative Trustees (or as provided in the terms of the Securities) to consider and act on any matter on which Holders of such class of Securities are entitled to act under the terms of this Declaration of Trust, the terms of the Securities or the rules of any stock exchange on which the Trust Preferred Securities are listed or admitted for trading. The Administrative Trustees shall call a meeting of the Holders of such class if directed to do so by the Holders of Securities representing at least 10% in liquidation amount of such class of Securities. Such direction shall be given by delivering to the Administrative Trustees one or more consents in a writing stating that the signing Holders of Securities wish to call a meeting and indicating the general or specific purpose for which the meeting is to be called. Any Holders of Securities calling a meeting shall specify in writing the Security Certificates held by the Holders of Securities exercising the right to call a meeting and only those Securities specified shall be counted for purposes of determining whether the required percentage set forth in the second sentence of this paragraph has been met.

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

(i) notice of any such meeting shall be given to all the Holders of Securities having a right to vote thereat at least 7 days and not more than 60 days before the date of such meeting. Whenever a vote, consent or approval of the Holders of Securities is permitted or required under this Declaration of Trust or the rules of any stock exchange on which the Trust Preferred Securities are listed or admitted for trading, such vote, consent or approval may be given at a meeting of the Holders of Securities. Any action that may be taken at a meeting of the Holders of Securities may be taken without a meeting and without prior notice if a consent in writing setting forth the action so taken is signed by the Holders of Securities owning not less than the minimum amount of Securities in liquidation amount that would be necessary to authorize or take such action at a meeting at which all Holders of Securities having a right to vote thereon were present and voting. Prompt notice of the taking of action without a meeting shall be given to the Holders of Securities entitled to vote who have not consented in writing. The Administrative Trustees may specify that any written ballot submitted to the Security Holder for the purpose of taking any action without a meeting shall be returned to the Trust within the time specified by the Administrative Trustees;

(ii) each Holder of a Security may authorize any Person to act for it by proxy on all matters in which a Holder of Securities is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. No proxy shall be valid after the expiration of 11 months from the date thereof unless otherwise provided in the

proxy. Every proxy shall be revocable at the pleasure of the Holder of Securities executing it. Except as otherwise provided herein, all matters relating to the giving, voting or validity of proxies shall be governed by the General Corporation Law of the State of Delaware relating to proxies, and judicial interpretations thereunder, as if the Trust were a Delaware corporation and the Holders of the Securities were stockholders of a Delaware corporation;

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

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

### ARTICLE XIII.

#### REPRESENTATIONS OF INSTITUTIONAL TRUSTEE AND DELAWARE TRUSTEE

SECTION 13.1 Representations and Warranties of Institutional Trustee. The Trustee that acts as initial Institutional Trustee represents and warrants to the Trust and to the Sponsor at the date of this Declaration of Trust, and each Successor Institutional Trustee represents and warrants to the Trust and the Sponsor at the time of the Successor Institutional Trustee's acceptance of its appointment as Institutional Trustee that:

(a) the Institutional Trustee is a banking corporation with trust powers, duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, with trust power and authority to execute and deliver, and to carry out and perform its obligations under the terms of, this Declaration of Trust;

(b) the Institutional Trustee has a combined capital and surplus of at least fifty million U.S. dollars (\$50,000,000).

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

(d) the execution, delivery and performance of the Declaration of Trust by the Institutional Trustee do not conflict with or constitute a breach of the Articles of Organization or By-laws of the Institutional Trustee; and

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

SECTION 13.2 Representations and Warranties of Delaware Trustee. The Trustee that acts as initial Delaware Trustee represents and warrants to the Trust and to the Sponsor at the date of this Declaration of Trust, and each Successor Delaware Trustee represents and warrants to the Trust and the Sponsor at the time of the Successor Delaware Trustee's acceptance of its appointment as Delaware Trustee that:

(a) The Delaware Trustee is a Delaware banking corporation with trust powers, duly organized, validly existing and in good standing under the laws of the State of Delaware, with power and authority to execute and deliver, and to carry out and perform its obligations under the terms of, the Declaration of Trust.

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

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

(d) The Delaware Trustee is an entity which maintains its principal place of business in the State of Delaware.

#### ARTICLE XIV.

#### MISCELLANEOUS

SECTION 14.1 Notices. All notices provided for in this Declaration of Trust shall be in writing, duly signed by the party giving such notice, and shall be delivered, telecopied or mailed by registered or certified mail, as follows:

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

Capital One Capital V  
c/o Capital One Financial Corporation  
1680 Capital One Drive  
McLean, Virginia 22102  
Attention: Administrative Trustees

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

BNY Mellon Trust of Delaware  
White Clay Center  
Route 273  
Newark, Delaware 19711  
Attention: Corporate Trust Administration

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

The Bank of New York Mellon Trust Company, N.A.  
2 North LaSalle Street, Suite 1020  
Chicago, Illinois 60602  
Attention: Corporate Trust Administration

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

Capital One Financial Corporation  
1680 Capital One Drive  
McLean, Virginia 22102  
Attention: General Counsel

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

All such notices shall be deemed to have been given when received in person, telecopied with receipt confirmed, or mailed by first class mail, postage prepaid except that if a notice or other document is refused delivery or cannot be delivered because of a changed address of which no notice was given, such notice or other document shall be deemed to have been delivered on the date of such refusal or inability to deliver.

**SECTION 14.2 Governing Law; Waiver of Jury Trial.** This Declaration of Trust and the Securities and the rights of the parties hereunder and thereunder shall be governed by and interpreted in accordance with the laws of the State of Delaware and all rights and remedies shall be governed by such laws without regard to principles of conflict of laws. EACH OF THE PARTIES HERETO 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 DECLARATION OF TRUST, THE SECURITIES OR THE TRANSACTION CONTEMPLATED HEREBY.

SECTION 14.3 Intention of the Parties. It is the intention of the parties hereto that the Trust be classified for United States federal income tax purposes as a grantor trust. The provisions of this Declaration of Trust shall be interpreted in a manner consistent with this classification.

SECTION 14.4 Headings. Headings contained in this Declaration of Trust are inserted for convenience of reference only and do not affect the interpretation of this Declaration of Trust or any provision hereof.

SECTION 14.5 Successors and Assigns. Whenever in this Declaration of Trust any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included, and all covenants and agreements in this Declaration of Trust by the Sponsor and the Trustees shall bind and inure to the benefit of their respective successors and assigns, whether so expressed.

SECTION 14.6 Partial Enforceability. If any provision of this Declaration of Trust, or the application of such provision to any Person or circumstance, shall be held invalid, the remainder of this Declaration of Trust, or the application of such provision to Persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

SECTION 14.7 Counterparts. This Declaration of Trust may contain more than one counterpart of the signature page and this Declaration of Trust may be executed by the affixing of the signature of each of the Trustees to one of such counterpart signature pages. All of such counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

THE RECEIPT AND ACCEPTANCE OF A SECURITY OR ANY INTEREST THEREIN BY OR ON BEHALF OF A HOLDER OR TRUST PREFERRED SECURITY BENEFICIAL OWNER, WITHOUT ANY SIGNATURE OR FURTHER MANIFESTATION OF ASSENT, SHALL CONSTITUTE THE UNCONDITIONAL ACCEPTANCE BY THE HOLDER AND ALL OTHERS HAVING A BENEFICIAL INTEREST IN SUCH SECURITY OF ALL THE TERMS AND PROVISIONS OF THIS DECLARATION, THE TRUST PREFERRED SECURITIES GUARANTEE AND THE INDENTURE, AND AGREEMENT TO THE SUBORDINATION PROVISIONS AND OTHER TERMS OF THE TRUST PREFERRED SECURITIES GUARANTEE AND THE INDENTURE, AND SHALL CONSTITUTE THE AGREEMENT OF THE TRUST, SUCH HOLDER AND SUCH OTHERS THAT THE TERMS AND PROVISIONS OF THIS DECLARATION SHALL BE BINDING, OPERATIVE AND EFFECTIVE AS BETWEEN THE TRUST AND SUCH HOLDER AND SUCH OTHERS.

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

/s/ Thomas A. Feil

Name: Thomas A. Feil  
Title: Administrative Trustee

/s/ Stephen Linehan

Name: Stephen Linehan  
Title: Administrative Trustee

BNY MELLON TRUST OF DELAWARE, as  
Delaware Trustee

By: /s/ Kristine K. Gullo

Name: Kristine K. Gullo  
Title: Vice President

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A.,  
as Institutional Trustee

By: /s/ L. Garcia

Name: L. Garcia  
Title: Vice President

CAPITAL ONE FINANCIAL  
CORPORATION, as Sponsor

By: /s/ Gary L. Perlin

Name: Gary L. Perlin  
Title: Chief Financial Officer

Amended and Restated Declaration of Trust

ANNEX I

TERMS OF  
10.25% CUMULATIVE TRUST PREFERRED SECURITIES  
COMMON SECURITIES

Pursuant to Section 7.1 of the Amended and Restated Declaration of Trust, dated as of August 5, 2009 (as amended from time to time, the “Declaration of Trust”), the designation, rights, privileges, restrictions, preferences and other terms and provisions of the Trust Preferred Securities and the Common Securities are set out below (each capitalized term used but not defined herein has the meaning set forth in the Declaration of Trust or, if not defined in such Declaration of Trust, as defined in the Prospectus referred to below):

1. Designation and Number.

(a) Trust Preferred Securities. 1,000,000 Trust Preferred Securities of the Trust with an aggregate liquidation amount with respect to the assets of the Trust of one billion dollars (\$1,000,000,000), and a liquidation amount with respect to the assets of the Trust of \$1,000.00 per trust preferred security, are hereby designated for the purposes of identification only as “10.25% Cumulative Trust Preferred Securities” (the “Trust Preferred Securities”). The Trust Preferred Security Certificates evidencing the Trust Preferred Securities shall be substantially in the form of Exhibit A-1 to the Declaration of Trust, with such changes and additions thereto or deletions therefrom as may be required by ordinary usage, custom or practice or to conform to the rules of any stock exchange on which the Trust Preferred Securities are listed.

(b) Common Securities. 10 Common Securities of the Trust with an aggregate liquidation amount with respect to the assets of the Trust of ten thousand dollars (\$10,000), and a liquidation amount with respect to the assets of the Trust of \$1,000.00 per common security, are hereby designated for the purposes of identification only as “Common Securities” (the “Common Securities”). The Common Security Certificates evidencing the Common Securities shall be substantially in the form of Exhibit A-2 to the Declaration of Trust, with such changes and additions thereto or deletions therefrom as may be required by ordinary usage, custom or practice.

2. Distributions.

(a) Distributions payable on each Trust Preferred Security will be fixed at a rate per annum of 10.25% (the “Coupon Rate”) of the stated liquidation amount of \$1,000.00 per Trust Preferred Security, such rate being the rate of interest payable on the Junior Subordinated Debt Securities to be held by the Institutional Trustee. Distributions in arrears beyond the first date such Distributions are payable (or would be payable, if not for any Extended Interest Payment Period (as defined below) or default by the Junior Subordinated Debt Securities Issuer on the Junior Subordinated Debt Securities) will bear interest thereon compounded semi-annually at the Coupon Rate (to the extent permitted by applicable law). The term “Distributions” as used herein includes such cash distributions and any such interest payable unless otherwise stated. A Distribution is payable only to the extent that payments are made in respect of the Junior Subordinated Debt Securities held by the Institutional Trustee and to the extent the Institutional

Trustee has funds available therefor. The amount of Distributions payable for any period will be computed for any full semi-annual Distribution period on the basis of a 360-day year of twelve 30-day months, and for any period shorter than a full semi-annual Distribution period for which Distributions are computed, Distributions will be computed on the basis of a 30-day month and, for periods less than a month, the actual number of days elapsed per 30-day month.

(b) Distributions on the Trust Preferred Securities will be cumulative, will accrue from and including August 5, 2009, and will be payable semi-annually in arrears, on February 15 and August 15 of each year, commencing on February 15, 2010. When, as and if available for payment, Distributions will be made by the Paying Agent, except as otherwise described below. The Junior Subordinated Debt Securities Issuer has the right under the Indenture to defer payments of interest on the Junior Subordinated Debt Securities from time to time for a period not exceeding 10 consecutive semi-annual periods (each an "Extended Interest Payment Period"), during which Extended Interest Payment Period no interest shall be due and payable on the Junior Subordinated Debt Securities, provided, that no Extended Interest Payment Period may extend beyond the date of maturity of the Junior Subordinated Debt Securities. As a consequence of the Junior Subordinated Debt Securities Issuer's election to defer payment of interest on the Junior Subordinated Debt Securities, semi-annual Distributions will also be deferred. Despite such deferral, semi-annual Distributions will continue to accrue with interest thereon (to the extent permitted by applicable law) at the Coupon Rate compounded semi-annually during any such Extended Interest Payment Period. In the event that the Junior Subordinated Debt Securities Issuer exercises its right to defer payment of interest on the Junior Subordinated Debt Securities, then the Junior Subordinated Debt Securities Issuer and its Subsidiaries shall not (a) declare or pay any dividend on, make any distributions with respect to, or redeem, purchase, acquire or make a liquidation payment with respect to, any of its capital stock or the capital stock of its Subsidiaries, (b) make any payment of interest on or principal of (or premium, if any, on), or repay, repurchase or redeem, any debt securities issued by the Junior Subordinated Debt Securities Issuer (including other junior subordinated debt securities or other junior subordinated debt) that rank pari passu with or junior in interest to the Junior Subordinated Debt Securities, or (c) make any guarantee payments on any guarantee by the Junior Subordinated Debt Securities Issuer of the debt securities of any of its Subsidiaries (including under other guarantees of junior subordinated debt securities or other junior subordinated debt) if such guarantee ranks pari passu with or junior in interest to the Junior Subordinated Debt Securities (other than (i) dividends or distributions in capital stock of the Junior Subordinated Debt Securities Issuer, (ii) payments under the guarantee with respect to the Trust Preferred Securities, (iii) any declaration or payment of a dividend in connection with the implementation of a shareholders' rights plan, or the issuance of stock under any such plan or the redemption or repurchase of any such rights pursuant thereto, (iv) repurchases, redemptions or other acquisitions of shares of capital stock of the Junior Subordinated Debt Securities Issuer in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of employees, officers, directors or consultants, and (v) solely in the case of a Subsidiary of the Junior Subordinated Debt Securities Issuer, any declaration of dividends or distributions on the capital stock of such Subsidiary to the Junior Subordinated Debt Securities Issuer or one of its Affiliates). Prior to the termination of any such Extended Interest Payment Period, the Junior Subordinated Debt Securities Issuer may further extend such Extended Interest Payment Period; provided, that such Extended Interest Payment Period, together with all such previous and further extensions thereof, may not exceed 10 consecutive semi-annual periods;

provided further, that no Extended Interest Payment Period may extend beyond the maturity of the Junior Subordinated Debt Securities. Payments of deferred Distributions and accrued interest thereon will be payable to Holders as they appear on the books and records of the Trust on the first record date after the end of the Extended Interest Payment Period. Upon the termination of any Extended Interest Payment Period and the payment of all amounts then due, the Junior Subordinated Debt Securities Issuer may commence a new Extended Interest Payment Period, subject to the above requirements. The Administrative Trustees or, if the Institutional Trustee is the sole holder of the Junior Subordinated Debt Securities, the Institutional Trustee, will give notice to each Holder of any Extended Interest Payment Period within five days of their receipt of notice thereof from the Junior Subordinated Debt Securities Issuer.

(c) Distributions on the Trust Preferred Securities will be payable to the Holders thereof as they appear on the books and records of the Trust at the close of business on the relevant record dates. While the Trust Preferred Securities remain in book-entry only form, the relevant record dates shall be one Business Day prior to the relevant payment dates which payment dates shall correspond to the interest payment dates on the Junior Subordinated Debt Securities. Subject to any applicable laws and regulations and the provisions of the Declaration of Trust, each such payment in respect of the Trust Preferred Securities will be made as described under the heading “Summary of Terms of Trust Preferred Securities—Distributions” in the Prospectus Supplement dated July 29, 2009 to the Prospectus dated May 8, 2009 (the “Prospectus”), of the Trust included in the Registration Statement on Form S-3 of the Sponsor, the Trust and certain other statutory trusts. The relevant record dates for the Common Securities shall be the same record date as for the Trust Preferred Securities. If the Trust Preferred Securities shall not continue to remain in book-entry only form, the relevant record dates for the Trust Preferred Securities shall be the first days of the months in which the relevant payment dates occur, which payment dates shall correspond to the interest payment dates on the Junior Subordinated Debt Securities. Distributions payable on any Securities that are not punctually paid on any Distribution payment date, as a result of the Junior Subordinated Debt Securities Issuer having failed to make a payment under the Junior Subordinated Debt Securities, will cease to be payable to the Person in whose name such Securities are registered on the relevant record date, and such defaulted Distribution will instead be payable to the Person in whose name such Securities are registered on the special record date or other specified date determined in accordance with the Indenture. If any date on which Distributions are payable on the Securities is not a Business Day, then payment of the Distribution payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay) except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date.

(d) In the event that there is any money or other property held by or for the Trust that is not accounted for hereunder, such property shall be distributed Pro Rata (as defined herein) among the Holders of the Securities.

### 3. Liquidation Distribution Upon Dissolution.

(a) In the event of any voluntary or involuntary dissolution of the Trust, the Holders of the Securities on the date of the dissolution will be entitled to receive out of the assets of the

Trust available for distribution to Holders of Securities after satisfaction of liabilities of creditors, distributions in an amount equal to the aggregate of the stated liquidation amount of \$1,000.00 per Security plus accrued and unpaid Distributions thereon to the date of payment (such amount being the "Liquidation Distribution"), unless (i) such dissolution was in accordance with Section 8.1(a)(iv) of the Declaration of Trust, or (ii) in connection with such dissolution, as determined by the Sponsor, Junior Subordinated Debt Securities in an aggregate principal amount equal to the aggregate stated liquidation amount of, with an interest rate equal to the Coupon Rate, and bearing accrued and unpaid interest in an amount equal to the accrued and unpaid Distributions on, such Securities outstanding at such time, have been distributed on a Pro Rata basis to the Holders of the Securities in exchange for such Securities. Prior to any such Liquidation Distribution, the Junior Subordinated Debt Securities Issuer will obtain any required regulatory approval.

(b) If, upon any such dissolution, the Liquidation Distribution can be paid only in part because the Trust has insufficient assets available to pay in full the aggregate Liquidation Distribution, then the amounts payable directly by the Trust on the Securities shall be paid on a Pro Rata basis.

(c) On and from the date fixed by the Administrative Trustees for any distribution of the Junior Subordinated Debt Securities upon the dissolution of the Trust: (i) the Securities will no longer be deemed to be outstanding, (ii) DTC or its nominee (or any successor Clearing Agency or its nominee), as the record Holder of the Trust Preferred Securities, will receive a registered global certificate or certificates representing the Junior Subordinated Debt Securities to be delivered upon such distribution and (iii) any certificates representing Securities, except for certificates representing Trust Preferred Securities held by DTC or its nominee (or any successor Clearing Agency or its nominee), will be deemed to represent beneficial interests in the Junior Subordinated Debt Securities having an aggregate principal amount equal to the aggregate stated liquidation amount of, with an interest rate identical to the Coupon Rate of, and accrued and unpaid interest equal to accrued and unpaid Distributions on such Securities until such certificates are presented to the Junior Subordinated Debt Securities Issuer or its agent for transfer or reissue.

(d) If the Junior Subordinated Debt Securities are distributed to the Holders of the Securities, pursuant to the terms of the Indenture, the Junior Subordinated Debt Securities Issuer will use its best efforts to cause the Junior Subordinated Debt Securities to be listed on the New York Stock Exchange or on such other exchange, if any, as the Trust Preferred Securities were listed immediately prior to the distribution of the Junior Subordinated Debt Securities.

#### 4. Redemption and Distribution.

(a) Upon the repayment of the Junior Subordinated Debt Securities, whether at maturity or upon redemption (either (i) in whole or in part at any time after August 15, 2014 at the option of the Junior Subordinated Debt Securities Issuer or (ii) in whole but not in part at any time pursuant to a Tax Event or a Capital Treatment Event as described below), the proceeds from such repayment or payment shall be simultaneously applied to redeem Securities having an aggregate liquidation amount equal to the aggregate principal amount of the Junior Subordinated Debt Securities so repaid or redeemed at a redemption price of, (x) in the case of a redemption

pursuant to clause (i), the price calculated as described in Section 4(c); and (y) in the case of redemption pursuant to clause (ii), the aggregate principal amount of the Junior Subordinated Debt Securities so repaid or redeemed at a redemption price of \$1,000.00 per Junior Subordinated Debt Security plus an amount equal to accrued and unpaid Distributions thereon at the date of the redemption, in each case payable in cash (the "Redemption Price"). Holders shall be given not less than 30 or more than 60 days' notice of such redemption. Prior to any such redemption, the Junior Subordinated Debt Securities Issuer will obtain any required regulatory approval.

(b) If fewer than all the outstanding Securities are to be so redeemed, the Securities will be redeemed Pro Rata and the Trust Preferred Securities to be redeemed will be as described in Section 4(f)(ii) below.

(c) Subject to obtaining any required regulatory approval, the Junior Subordinated Debt Securities Issuer shall have the right after August 15, 2014 to redeem the Junior Subordinated Debt Securities, in whole or in part, for cash in the amount equal to the greater of (x) 100% of the principal amount of the Junior Subordinated Debt Securities or (y) the present value of scheduled payments of principal and interest from the date of redemption to August 15, 2039, discounted to the redemption date on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at a discount rate equal to the Treasury Rate plus a spread of 0.75%, plus accrued and unpaid interest to the redemption date.

For purposes of the above:

"Treasury Rate" means the semi-annual equivalent yield to maturity of the Treasury Security that corresponds to the Treasury Price (calculated in accordance with standard market practice and computed as of the second trading day preceding the date of the redemption);

"Treasury Security" means the United States Treasury security that the Treasury Dealer determines would be appropriate to use, at the time of determination and in accordance with standard market practice, in pricing the Junior Subordinated Debt Securities being redeemed in a tender offer based on a spread to United States Treasury yields;

"Treasury Price" means the bid-side price for the Treasury Security as of the third trading day preceding the redemption date, as set forth in the daily statistical release (or any successor release) published by the Federal Reserve Bank of New York on that trading day and designated "Composite 3:30 p.m. Quotations for U.S. Government Securities," except that: (1) if that release (or any successor release) is not published or does not contain that price information on that trading day; or (2) if the Treasury Dealer determines that the price information is not reasonably reflective of the actual bid-side price of the Treasury Security prevailing at 3:30 p.m., New York City time, on that trading day, then the Treasury Price will instead mean the bid-side price for the Treasury Security at or around 3:30 p.m., New York City time, on that trading day (expressed on a next trading day settlement basis) as determined by the Treasury Dealer through such alternative means as the Treasury Dealer considers to be appropriate under the circumstances; and

“Treasury Dealer” means J.P. Morgan Securities Inc. (or its successor) or, if J.P. Morgan Securities Inc. (or its successor) refuses to act as Treasury Dealer for this purpose or ceases to be a primary U.S. Government securities dealer, another nationally recognized investment banking firm that is a primary U.S. Government securities dealer specified by the Junior Subordinated Debt Securities Issuer for these purposes.

(d) Subject to obtaining any required regulatory approval, the Junior Subordinated Debt Securities Issuer shall have the right to redeem the Junior Subordinated Debt Securities, in whole or in part, for cash if, at any time, a Tax Event or a Capital Treatment Event (each as defined below) shall occur and be continuing, upon not less than 30 nor more than 60 days’ notice, within 90 days following the occurrence of such Tax Event or Capital Treatment Event, and, following such redemption, Securities with an aggregate liquidation amount equal to the aggregate principal amount of the Junior Subordinated Debt Securities so redeemed shall be redeemed by the Trust at the Redemption Price on a Pro Rata basis; provided, however, that if at the time there is available to the Junior Subordinated Debt Securities Issuer or the Trust the opportunity to eliminate, within such 90-day period, the Tax Event or Capital Treatment Event by taking some ministerial action, such as filing a form or making an election or pursuing some other similar reasonable measure that will have no adverse effect on the Trust, the Junior Subordinated Debt Securities Issuer or the Holders of the Securities, then the Junior Subordinated Debt Securities Issuer or the Trust will pursue such measure in lieu of redemption.

“Tax Event” means the receipt by the Junior Subordinated Debt Securities Issuer or the Trust of an opinion of counsel experienced in such matters to the effect that, as a result of any amendment to or change (including any prospective proposed change announced after the original issuance of the Trust Preferred Securities) in the laws or any regulations thereunder of the United States or any political subdivision or taxing authority thereof or therein, or any official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying the laws enumerated in the preceding clause, there is more than an insubstantial risk that: (i) the Trust is, or will be within 90 days of the date of such opinion, subject to United States federal income tax with respect to income received or accrued on the Junior Subordinated Debt Securities; (ii) interest payable by the Junior Subordinated Debt Securities Issuer on the Junior Subordinated Debt Securities is not, or within 90 days of the date of such opinion, will not be, deductible by the Junior Subordinated Debt Securities Issuer, in whole or in part, for United States federal income tax purposes; or (iii) the Trust is, or will be within 90 days of the date of such opinion, subject to more than a de minimis amount of other taxes (including withholding taxes), duties, assessments or other governmental charges.

“Capital Treatment Event” means the reasonable determination by the Junior Subordinated Debt Securities Issuer that, as a result of any amendment to, or change (including any prospective proposed change announced after the original issuance of the Trust Preferred Securities) in, the laws, rules or regulations of the United States or any political subdivision thereof or therein, or as the result of any official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying such laws, rules or regulations, which amendment or change is enacted or becomes effective or which decision, action or pronouncement is announced after the date of original issuance of the Trust Preferred Securities, there is more than an insubstantial risk of impairment of the Junior Subordinated Debt Securities Issuer’s ability to treat the Trust Preferred Securities as “Tier 1 Capital” (or the then

equivalent thereof) for purposes of the capital adequacy guidelines of the Federal Reserve Board (or any successor regulatory authority with jurisdiction over bank holding companies), as then in effect and applicable to the Junior Subordinated Debt Securities Issuer; provided, however, that the distribution of the Junior Subordinated Debt Securities in connection with the Liquidation of the Trust by the Junior Subordinated Debt Securities Issuer shall not in and of itself constitute a Capital Treatment Event unless such Liquidation shall have occurred in connection with a Tax Event.

(e) The Trust may not redeem fewer than all the outstanding Securities unless all accrued and unpaid Distributions have been paid on all Securities for all semi-annual Distribution periods terminating on or before the date of redemption.

(f) Redemption or Distribution procedures will be as follows:

(i) Notice of any redemption of, or notice of distribution of Junior Subordinated Debt Securities in exchange for the Securities (a "Redemption/Distribution Notice") will be given by the Trust by mail to each Holder of the Securities to be redeemed or exchanged not fewer than 30 nor more than 60 days before the date fixed for redemption or exchange thereof which, in the case of a redemption, will be the date fixed for redemption of the Junior Subordinated Debt Securities. For purposes of the calculation of the date of redemption or exchange and the dates on which notices are given pursuant to this Section 4(f)(i), a Redemption/Distribution Notice shall be deemed to be given on the day such notice is first mailed by first-class mail, postage prepaid, to the Holders of the Securities. Each Redemption/Distribution Notice shall be addressed to the Holders of the Securities at the address of each such Holder appearing in the books and records of the Trust. No defect in the Redemption/Distribution Notice or in the mailing of either thereof with respect to any Holder shall affect the validity of the redemption or exchange proceedings with respect to any other Holder.

(ii) In the event that fewer than all the outstanding Securities are to be redeemed, the Trust Preferred Securities to be redeemed shall be redeemed Pro Rata from each Holder of Trust Preferred Securities, it being understood that, in respect of Trust Preferred Securities registered in the name of and held of record by DTC or its nominee (or any successor Clearing Agency or its nominee), the distribution of the proceeds of such redemption will be made to each Clearing Agency Participant (or Person on whose behalf such nominee holds such securities) in accordance with the procedures applied by such agency or nominee.

(iii) If Securities are to be redeemed and the Trust gives a Redemption/Distribution Notice, which notice may only be issued if the Junior Subordinated Debt Securities are redeemed as set out in this Section 4 (which notice will be irrevocable), then (A) while the Trust Preferred Securities are in book-entry only form, with respect to the Trust Preferred Securities, by 12:00 noon, New York City time, on the redemption date, provided, that the Junior Subordinated Debt Securities Issuer has paid to the Institutional Trustee a sufficient amount of cash in connection with the related redemption or maturity of the Junior Subordinated Debt Securities, the Institutional Trustee will deposit irrevocably with DTC or its nominee (or successor Clearing Agency

or its nominee) funds sufficient to pay the applicable Redemption Price with respect to the Trust Preferred Securities and will give DTC (or any successor Clearing Agency) irrevocable instructions and authority to pay the Redemption Price to the Holders of the Trust Preferred Securities, and (B) with respect to Trust Preferred Securities issued in definitive form and Common Securities, provided, that the Junior Subordinated Debt Securities Issuer has paid the Institutional Trustee a sufficient amount of cash in connection with the related redemption or maturity of the Junior Subordinated Debt Securities, the Paying Agent will pay the relevant Redemption Price to the Holders of such Securities, upon surrender thereof, by check mailed to the address of the relevant Holder appearing on the books and records of the Trust on the redemption date. If a Redemption/Distribution Notice shall have been given and funds deposited as required, if applicable, then immediately prior to the close of business on the date of such deposit, or on the redemption date, as applicable, distributions will cease to accrue on the Securities so called for redemption and all rights of the Holders of such Securities so called for redemption will cease, except the right of the Holders of such Securities to receive the Redemption Price, but without interest on such Redemption Price. Neither the Administrative Trustees nor the Trust shall be required to register or cause to be registered the transfer of any Securities that have been so called for redemption. The record date for any payment under this Section 4 shall be determined as set forth in Section 2(d). If any date fixed for redemption of Securities is not a Business Day, then payment of the Redemption Price payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay) except that, if such Business Day falls in the next calendar year, such payment will be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date fixed for redemption. If payment of the Redemption Price in respect of any Securities is improperly withheld or refused and not paid by the Paying Agent or by the Sponsor as guarantor pursuant to the Trust Preferred Securities Guarantee, Distributions on such Securities will continue to accrue from the original redemption date to the actual date of payment, in which case the actual payment date will be considered the date fixed for redemption for purposes of calculating the Redemption Price.

(iv) Redemption/Distribution Notices shall be sent by the Administrative Trustees on behalf of the Trust to (A) in respect of the Trust Preferred Securities, DTC or its nominee (or any successor Clearing Agency or its nominee) if the Global Certificates have been issued or, if Definitive Trust Preferred Security Certificates have been issued, to the Holder thereof and (B) in respect of the Common Securities to the Holder thereof.

(v) Subject to the foregoing and applicable law (including, without limitation, United States federal securities laws), the Junior Subordinated Debt Securities Issuer or its affiliates may at any time and from time to time purchase outstanding Trust Preferred Securities by tender, in the open market or by private agreement.

## 5. Voting Rights - Trust Preferred Securities.

(a) Except as provided under Sections 5(b) and 7 and as otherwise required by law and the Declaration of Trust, the Holders of the Trust Preferred Securities will have no voting rights.

(b) Subject to the requirements set forth in this paragraph, the Holders of a Majority in liquidation amount of the Trust Preferred Securities, voting separately as a class, may direct the time, method, and place of conducting any proceeding for any remedy available to the Institutional Trustee, or direct the exercise of any trust or power conferred upon the Institutional Trustee under the Declaration of Trust, including the right to direct the Institutional Trustee, as holder of the Junior Subordinated Debt Securities, to (i) direct the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustee, or exercise any trust or power conferred on the Indenture Trustee with respect to the Junior Subordinated Debt Securities, (ii) waive any past Indenture Event of Default that is waivable under Section 5.6 of the Indenture, (iii) exercise any right to rescind or annul a declaration that the principal of all the Junior Subordinated Debt Securities shall be due and payable or (iv) consent to any amendment, modification or termination of the Indenture or the Junior Subordinated Debt Securities where such consent shall be required; provided, however, that, where a consent or action under the Indenture would require the consent or act of each holder of each Junior Subordinated Debt Security affected thereby, such consent or action under the Indenture shall not be effective until each Holder of Trust Preferred Securities shall have consented to such action or provided such consent. The Institutional Trustee shall not revoke any action previously authorized or approved by a vote of the Holders of the Trust Preferred Securities. Except with respect to directing the time, method and place of conducting a proceeding for a remedy available to the Institutional Trustee, the Institutional Trustee, as holder of the Junior Subordinated Debt Securities, shall not take any of the actions described in clauses (i), (ii), (iii) or (iv) above unless the Institutional Trustee has obtained an opinion of a nationally recognized independent tax counsel experienced in such matters to the effect that as a result of such action, the Trust will not fail to be classified as a grantor trust for United States federal income tax purposes. If the Institutional Trustee fails to enforce its rights under the Junior Subordinated Debt Securities, to the fullest extent permitted by law, any Holder of Trust Preferred Securities may directly institute a legal proceeding against the Junior Subordinated Debt Securities Issuer to enforce the Institutional Trustee's rights under the Junior Subordinated Debt Securities without first instituting a legal proceeding against the Institutional Trustee or any other Person or entity. If a Declaration Default has occurred and is continuing and such event is attributable to the failure of the Junior Subordinated Debt Securities Issuer to pay interest or principal on the Junior Subordinated Debt Securities on the date such interest or principal is otherwise payable (or in the case of redemption, on the redemption date), then a holder of Trust Preferred Securities may also directly institute a proceeding for enforcement of payment to such holder (a "Direct Action") of the principal of or interest on the Junior Subordinated Debt Securities having a principal amount equal to the aggregate liquidation amount of the Trust Preferred Securities of such holder on or after the respective due date specified in the Junior Subordinated Debt Securities without first (i) directing the Institutional Trustee to enforce the terms of the Junior Subordinated Debt Securities or (ii) instituting a legal proceeding directly against the Junior Subordinated Debt Securities Issuer to enforce the Institutional Trustee's rights under the Junior Subordinated Debt Securities; provided, however, that if a Declaration Default results from the failure to pay interest on the Junior Subordinated Debt Securities during any Non-Acceleration Period, then a holder of Trust Preferred Securities may not institute a Direct Action for the payment of principal on the Junior Subordinated Debt

Securities, and the Institutional Trustee may not take any Legal Action for the payment of principal on the Junior Subordinated Debt Securities, during such Non-Acceleration Period. Except as provided in the preceding sentence, the Holders of Trust Preferred Securities will not be able to exercise directly any other remedy available to the holders of the Junior Subordinated Debt Securities. In connection with such Direct Action, the Junior Subordinated Debt Securities Issuer will be subrogated to the rights of such Holder of Trust Preferred Securities under the Declaration of Trust to the extent of any payment made by the Junior Subordinated Debt Securities Issuer to such holder of Trust Preferred Securities in such Direct Action.

Any required approval or direction of Holders of Trust Preferred Securities may be given at a separate meeting of Holders of Trust Preferred Securities convened for such purpose, at a meeting of all of the Holders of Securities or pursuant to written consent. The Administrative Trustees will cause a notice of any meeting at which Holders of Trust Preferred Securities are entitled to vote to be mailed to each Holder of record of Trust Preferred Securities. Each such notice will include a statement setting forth (i) the date and time of such meeting, (ii) a description of any resolution proposed for adoption at such meeting on which such Holders are entitled to vote and (iii) instructions for the delivery of proxies.

No vote or consent of the Holders of the Trust Preferred Securities will be required for the Trust to redeem and cancel Trust Preferred Securities or to distribute the Junior Subordinated Debt Securities in accordance with this Declaration of Trust and the terms of the Securities.

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

#### 6. Voting Rights - Common Securities.

(a) Except as provided under Sections 6(b), (c) and 7 as otherwise required by law and the Declaration of Trust, the Holders of the Common Securities will have no voting rights.

(b) The Holders of the Common Securities are entitled, in accordance with and subject to Article V of the Declaration of Trust, to vote to appoint, remove or replace any Trustee or to increase or decrease the number of Trustees.

(c) Subject to Section 2.6 of the Declaration of Trust and only after the Declaration Default with respect to the Trust Preferred Securities has been cured, waived, or otherwise eliminated and subject to the requirements of the second to last sentence of this paragraph, the Holders of a Majority in liquidation amount of the Common Securities, voting separately as a class, may direct the time, method, and place of conducting any proceeding for any remedy available to the Institutional Trustee, or direct the exercise of any trust or power conferred upon the Institutional Trustee under the Declaration of Trust, including (i) directing the time, method, place of conducting any proceeding for any remedy available to the Indenture Trustee, or exercising any trust or power conferred on the Indenture Trustee with respect to the Junior Subordinated Debt Securities, (ii) waiving any past Indenture Event of Default that is waivable under Section 5.6 of the Indenture, or (iii) exercising any right to rescind or annul a declaration

that the principal of all the Junior Subordinated Debt Securities shall be due and payable, provided that, where a consent or action under the Indenture would require the consent or act of the Holders of greater than a majority in principal amount of Junior Subordinated Debt Securities affected thereby (a "Super Majority"), the Institutional Trustee may only give such consent or take such action at the written direction of the Holders of at least the proportion in liquidation amount of the Common Securities which the relevant Super Majority represents of the aggregate principal amount of the Junior Subordinated Debt Securities outstanding. Pursuant to this Section 6(c), the Institutional Trustee shall not revoke any action previously authorized or approved by a vote of the Holders of the Trust Preferred Securities. Except with respect to directing the time, method and place of conducting any proceeding for any remedy available to the Institutional Trustee or the Junior Subordinate Debt Securities Issuer as set forth above, the Institutional Trustee shall not take any action in accordance with the directions of the Holders of the Common Securities under this paragraph unless the Institutional Trustee has obtained an opinion of tax counsel to the effect that as a result of such action, the Trust will not fail to be classified as a grantor trust for United States federal income tax purposes. If the Institutional Trustee fails to enforce its rights under the Declaration of Trust, any Holder of Common Securities may institute a legal proceeding directly against any Person to enforce the Institutional Trustee's rights under the Declaration of Trust, without first instituting a legal proceeding against the Institutional Trustee or any other Person.

Any approval or direction of Holders of Common Securities may be given at a separate meeting of Holders of Common Securities convened for such purpose, at a meeting of all of the Holders of Securities or pursuant to written consent. The Administrative Trustees will cause a notice of any meeting at which Holders of Common Securities are entitled to vote to be mailed to each Holder of record of Common Securities. Each such notice will include a statement setting forth (i) the date and time of such meeting, (ii) a description of any resolution proposed for adoption at such meeting on which such Holders are entitled to vote and (iii) instructions for the delivery of proxies.

No vote or consent of the Holders of the Common Securities will be required for the Trust to redeem and cancel Common Securities or to distribute the Junior Subordinated Debt Securities in accordance with the Declaration of Trust and the terms of the Securities.

#### 7. Amendments to Declaration of Trust and Indenture.

(a) In addition to any requirements under Section 12.1 of the Declaration of Trust, if any proposed amendment to the Declaration of Trust provides for, or the Administrative Trustees otherwise propose to effect, (i) any action that would adversely affect the powers, preferences or special rights of the Securities, whether by way of amendment to the Declaration of Trust or otherwise, or (ii) the dissolution, winding-up or termination of the Trust, other than as described in Section 8.1 of the Declaration of Trust, then the Holders of outstanding Securities voting together as a single class, will be entitled to vote on such amendment or proposal (but not on any other amendment or proposal) and such amendment or proposal shall not be effective except with the approval of the Holders of at least a Majority in liquidation amount of the Securities, voting together as a single class; provided, however, if any amendment or proposal referred to in clause (i) above would adversely affect only the Trust Preferred Securities or only the Common Securities, then only the Holders of the affected class will be entitled to vote on such amendment or proposal and such amendment or proposal shall not be effective except with the approval of Holders of a Majority in liquidation amount of such class of Securities.

(b) In the event the consent of the Institutional Trustee as the holder of the Junior Subordinated Debt Securities is required under the Indenture with respect to any amendment, modification or termination on the Indenture or the Junior Subordinated Debt Securities, the Institutional Trustee shall request the written direction of the Holders of the Securities with respect to such amendment, modification or termination and shall vote with respect to such amendment, modification or termination as directed by a Majority in liquidation amount of the Securities voting together as a single class; provided, however, that where a consent under the Indenture would require the consent of the holders of greater than a majority in aggregate principal amount of the Junior Subordinated Debt Securities (a "Super Majority"), the Institutional Trustee may only give such consent at the direction of the Holders of at least the proportion in liquidation amount of the Securities which the relevant Super Majority represents of the aggregate principal amount of the Junior Subordinated Debt Securities outstanding; provided, further, that the Institutional Trustee shall not take any action in accordance with the directions of the Holders of the Securities under this Section 7(b) unless the Institutional Trustee has obtained an opinion of tax counsel to the effect that for the purposes of United States federal income tax the Trust will not be classified as other than a grantor trust on account of such action.

(c) Notwithstanding the foregoing, no amendment or modification may be made to the Declaration of Trust if such amendment or modification would (i) cause the Trust to be classified for purposes of United States federal income taxation as other than a grantor trust, (ii) reduce or otherwise adversely affect the powers of the Institutional Trustee in contravention of the Trust Indenture Act or (iii) cause the Trust to be deemed an "investment company" which is required to be registered under the Investment Company Act.

#### 8. Pro Rata.

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

#### 9. Ranking.

The Trust Preferred Securities rank pari passu and payment thereon shall be made Pro Rata with the Common Securities except that, where an Indenture Event of Default occurs and is continuing under the Indenture in respect of the Junior Subordinated Debt Securities held by the

Institutional Trustee, the rights of Holders of the Common Securities to payment in respect of Distributions and payments upon liquidation, redemption and otherwise are subordinated to the rights to payment of the Holders of the Trust Preferred Securities.

10. Acceptance of Trust Preferred Securities Guarantee and Indenture.

Each Holder of Trust Preferred Securities and Common Securities, by the acceptance thereof, agrees to the provisions of the Trust Preferred Securities Guarantee, including the subordination provisions therein and to the provisions of the Indenture.

11. No Preemptive Rights.

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

12. Miscellaneous.

These terms constitute a part of the Declaration of Trust.

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

**EXHIBIT A-1**

**FORM OF TRUST PREFERRED SECURITY CERTIFICATE**

THIS TRUST PREFERRED SECURITY IS A GLOBAL CERTIFICATE WITHIN THE MEANING OF THE DECLARATION HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY (THE "DEPOSITORY") OR A NOMINEE OF THE DEPOSITORY. THIS TRUST PREFERRED SECURITY IS EXCHANGEABLE FOR TRUST PREFERRED SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITORY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE DECLARATION AND NO TRANSFER OF THIS TRUST PREFERRED SECURITY (OTHER THAN A TRANSFER OF THIS TRUST PREFERRED SECURITY AS A WHOLE BY THE DEPOSITORY TO A NOMINEE OF THE DEPOSITORY OR BY A NOMINEE OF THE DEPOSITORY TO THE DEPOSITORY OR ANOTHER NOMINEE OF THE DEPOSITORY) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS TRUST PREFERRED SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (55 WATER STREET, NEW YORK, NEW YORK) TO THE TRUST OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY TRUST PREFERRED SECURITY ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY AND ANY PAYMENT HEREON IS MADE TO CEDE & CO., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY A PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

## Certificate Evidencing Trust Preferred Securities

of

CAPITAL ONE CAPITAL V  
10.25% Cumulative Trust Preferred Securities  
(Liquidation Amount \$1,000 per Trust Preferred Security)

CAPITAL ONE CAPITAL V, a statutory trust formed under the laws of the State of Delaware (the "Trust"), hereby certifies that (the "Holder") is the registered owner of ( ) trust preferred securities of the Trust representing undivided beneficial interests in the assets of the Trust designated the 10.25% Cumulative Trust Preferred Securities (the "Trust Preferred Securities"). The Trust Preferred Securities are transferable on the books and records of the Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer. The designation, rights, privileges, restrictions, preferences and other terms and provisions of the Trust Preferred Securities are set forth in, and this certificate and the Trust Preferred Securities represented hereby are issued and shall in all respects be subject to, the provisions of the Amended and Restated Declaration of Trust of the Trust dated as of August 5, 2009, as the same may be amended from time to time (the "Declaration of Trust"), including the designation of the terms of the Trust Preferred Securities as set forth in Annex I thereto. Capitalized terms used herein but not defined shall have the meaning given them in the Declaration of Trust. The Holder is entitled to the benefits of the Trust Preferred Securities Guarantee to the extent provided therein. The Sponsor will provide a copy of the Declaration of Trust, the Trust Preferred Securities Guarantee and the Indenture to a Holder without charge upon written request to the Sponsor at its principal place of business.

The Holder of this certificate, by accepting this certificate, is deemed to have (i) agreed to the terms of the Indenture and the Junior Subordinated Debt Securities, including that the Junior Subordinated Debt Securities are subordinate and junior in right of payment to all Senior Indebtedness (as defined in the Indenture) and (ii) agreed to the terms of the Trust Preferred Securities Guarantee, including that the Trust Preferred Securities Guarantee is subordinate and junior in right of payment to all Senior Indebtedness in the same manner and to the same extent as the Junior Subordinated Debt Securities.

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

By acceptance, the Holder agrees to treat, for United States federal income tax purposes, the Junior Subordinated Debt Securities as indebtedness and the Trust Preferred Securities as evidence of indirect beneficial ownership in the Junior Subordinated Debt Securities.

This Certificate shall be governed by the laws of the State of Delaware.

IN WITNESS WHEREOF, the Trust has executed this certificate this     day of August, 2009.

---

Name:  
Title: Administrative Trustee

A1-3

CERTIFICATE OF AUTHENTICATION

This certificate represents the Trust Preferred Securities referred to in the within-mentioned Declaration of Trust.

Dated: August , 2009

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A.,  
as Institutional Trustee

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

A1-4

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Trust Preferred Security Certificate to:

(Insert assignee's social security or tax identification number)

(Insert address and zip code of assignee)

and irrevocably appoints

as agent to transfer this Trust Preferred Security Certificate on the books of the Trust. The agent may substitute another to act for him or her.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

(Sign exactly as your name appears on the other side of this Trust Preferred Security Certificate)

---

**EXHIBIT A-2**

**FORM OF COMMON SECURITY CERTIFICATE**

TRANSFER OF THIS CERTIFICATE IS SUBJECT TO THE CONDITIONS SET FORTH IN THE DECLARATION REFERRED TO BELOW.

A2-1

## Certificate Evidencing Common Securities

of

## CAPITAL ONE CAPITAL V

Common Securities

(Liquidation Amount \$1,000 per Common Security)

CAPITAL ONE CAPITAL V, a statutory trust formed under the laws of the State of Delaware (the "Trust"), hereby certifies that Capital One Financial Corporation, a Delaware corporation (the "Holder"), is the registered owner of ( ) common securities of the Trust representing undivided beneficial interests in the assets of the Trust designated the Common Securities (the "Common Securities"). The Common Securities are transferable on the books and records of the Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer and satisfaction of the other conditions set forth in the Declaration of Trust (as defined below), including, without limitation, Section 9.1 thereof. The designation, rights, privileges, restrictions, preferences and other terms and provisions of the Common Securities represented hereby are issued and shall in all respects be subject to the provisions of the Amended and Restated Declaration of Trust of the Trust dated as of August 5, 2009, as the same may be amended from time to time (the "Declaration of Trust"), including the designation of the terms of the Common Securities as set forth in Annex I thereto. Capitalized terms used herein but not defined shall have the meaning given them in the Declaration of Trust. The Sponsor will provide a copy of the Declaration of Trust and the Indenture to a Holder without charge upon written request to the Sponsor at its principal place of business.

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

The Holder of this certificate, by accepting this certificate, is deemed to have agreed to the terms of the Indenture and the Junior Subordinated Debt Securities, including that the Junior Subordinated Debt Securities are subordinate and junior in right of payment to all Senior Indebtedness (as defined in the Indenture) as and to the extent provided in the Indenture.

By acceptance, the Holder agrees to treat, for United States federal income tax purposes, the Junior Subordinated Debt Securities as indebtedness and the Common Securities as evidence of indirect beneficial ownership in the Junior Subordinated Debt Securities.

This Certificate shall be governed by the laws of the State of Delaware.

IN WITNESS WHEREOF, the Trust has executed this certificate this     day of August, 2009.

---

Name:

Title: Administrative Trustee

A2-3

CERTIFICATE OF AUTHENTICATION

This certificate represents the Common Securities referred to in the within-mentioned Declaration of Trust.

Dated: August , 2009

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,  
as Institutional Trustee

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

A2-4

ASSIGNMENT

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

(Insert assignee's social security or tax identification number)

(Insert address and zip code of assignee)

and irrevocably appoints as agent to transfer this Common Security Certificate on the books of the Trust. The agent may substitute another to act for him or her.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

(Sign exactly as your name appears on the other side of this Common Security Certificate)

---

**EXHIBIT B**

**SPECIMEN OF JUNIOR SUBORDINATED DEBT SECURITY**

B-1

---

**EXHIBIT C**

**UNDERWRITING AGREEMENT**

C-1

**GUARANTEE AGREEMENT**

**Dated as of August 5, 2009**

**By and Between**

**CAPITAL ONE FINANCIAL CORPORATION,**

**as Guarantor**

**and**

**THE BANK OF NEW YORK MELLON,**

**as Trustee**

---

**CROSS REFERENCE TABLE<sup>1</sup>**

<u>Section of Trust Indenture Act of 1939, as Amended</u>	<u>Section of Guarantee Agreement</u>
310(a)	4.1(a)
310(b)	2.8; 4.1(c)
310(c)	Inapplicable
311(a)	2.2(b)
311(b)	2.2(b)
311(c)	Inapplicable
312(a)	2.2(a); 2.9
312(b)	2.2(b); 2.9
312(c)	2.9
313(a)	2.3
313(b)	2.3
313(c)	2.3
313(d)	2.3
314(a)	2.4
314(b)	Inapplicable
314(c)	2.5
314(d)	Inapplicable
314(e)	2.5
314(f)	Inapplicable
315(a)	3.1(d); 3.2(a)
315(b)	2.7(a)
315(c)	3.1(c)
315(d)	3.1(d)
316(a)	2.6; 5.4(a)
316(b)	5.3
316(c)	Inapplicable
317(a)	2.10
317(b)	Inapplicable
318(a)	2.1(b)

<sup>1</sup> *This Cross-Reference Table does not constitute part of the Agreement and shall not have any bearing upon the interpretation of any of its terms or provisions.*

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
<b>INDEX OF TERMS</b>	
Affiliate	2
Business Day	2
Common Securities	2
Common Stock	2
Company Indemnified Person	2
Corporate Trust Office	2
Declaration Default	2
Declaration of Trust	2
Existing Parity Obligations	2
Extended Interest Payment Period	3
Fourth Supplemental Indenture	3
Global Security	3
Guarantee Event of Default	3
Guarantee Payments	3
Guarantee Trustee	3
Holder	3
Indenture	3
Junior Subordinated Debt Securities	4
List of Holders	4
Majority in Liquidation Amount	4
Officers' Certificate	4
Parity Securities	4
Person	4
Redemption Price	4
Responsible Officer	5
Securities	5
Successor Guarantee Trustee	5
Trust Indenture Act	5
Trust Preferred Securities	5

**TABLE OF CONTENTS**

	<u>Page</u>
ARTICLE I INTERPRETATION AND DEFINITIONS	1
SECTION 1.1    INTERPRETATION AND DEFINITIONS	1
ARTICLE II TRUST INDENTURE ACT	5
SECTION 2.1    TRUST INDENTURE ACT; APPLICATION	5
SECTION 2.2    LISTS OF HOLDERS OF SECURITIES	5
SECTION 2.3    REPORTS BY GUARANTEE TRUSTEE	5
SECTION 2.4    PERIODIC REPORTS TO GUARANTEE TRUSTEE	6
SECTION 2.5    EVIDENCE OF COMPLIANCE WITH CONDITIONS PRECEDENT	6
SECTION 2.6    GUARANTEE EVENT OF DEFAULT; WAIVER	6
SECTION 2.7    GUARANTEE EVENT OF DEFAULT; NOTICE	6
SECTION 2.8    CONFLICTING INTERESTS	7
SECTION 2.9    DISCLOSURE OF INFORMATION	7
SECTION 2.10   GUARANTEE TRUSTEE MAY FILE PROOFS OF CLAIM	7
ARTICLE III POWERS, DUTIES AND RIGHTS OF GUARANTEE TRUSTEE	7
SECTION 3.1    POWERS AND DUTIES OF GUARANTEE TRUSTEE	7
SECTION 3.2    CERTAIN RIGHTS OF GUARANTEE TRUSTEE	9
ARTICLE IV GUARANTEE TRUSTEE	11
SECTION 4.1    GUARANTEE TRUSTEE; ELIGIBILITY	11
SECTION 4.2    APPOINTMENT, REMOVAL AND RESIGNATION OF GUARANTEE TRUSTEE	11
ARTICLE V GUARANTEE	12
SECTION 5.1    GUARANTEE	12
SECTION 5.2    WAIVER OF NOTICE AND DEMAND	12

**TABLE OF CONTENTS**

(continued)

	<u>Page</u>
SECTION 5.3 OBLIGATIONS NOT AFFECTED	13
SECTION 5.4 RIGHTS OF HOLDERS	14
SECTION 5.5 GUARANTEE OF PAYMENT	14
SECTION 5.6 SUBROGATION	14
SECTION 5.7 INDEPENDENT OBLIGATIONS	14
ARTICLE VI LIMITATION OF TRANSACTIONS; SUBORDINATION	15
SECTION 6.1 LIMITATION OF TRANSACTIONS	15
SECTION 6.2 RANKING	15
SECTION 6.3 SUBORDINATION OF COMMON SECURITIES	15
ARTICLE VII TERMINATION	16
SECTION 7.1 TERMINATION	16
ARTICLE VIII INDEMNIFICATION	16
SECTION 8.1 INDEMNIFICATION	16
ARTICLE IX MISCELLANEOUS	16
SECTION 9.1 SUCCESSORS AND ASSIGNS	16
SECTION 9.2 AMENDMENTS	16
SECTION 9.3 NOTICES	17
SECTION 9.4 BENEFIT	17
SECTION 9.5 GOVERNING LAW; WAIVER OF JURY TRIAL	17

## GUARANTEE AGREEMENT

This GUARANTEE AGREEMENT (the "Guarantee"), dated as of August 5, 2009, is executed and delivered by CAPITAL ONE FINANCIAL CORPORATION, a Delaware corporation (the "Guarantor"), and THE BANK OF NEW YORK MELLON, a corporation duly existing under the laws of the State of New York, as trustee (the "Guarantee Trustee"), for the benefit of the Holders (as defined herein) from time to time of the Securities (as defined herein) of CAPITAL ONE CAPITAL V, a Delaware statutory trust (the "Trust").

### RECITALS

WHEREAS, pursuant to the Declaration of Trust (as defined herein), the Trust may issue up to \$1,000,000,000 aggregate liquidation amount of trust preferred securities, having a liquidation amount of \$1,000.00 per security and designated the "10.25% Trust Preferred Securities" of the Trust (together with the further trust preferred securities that the Trust may issue pursuant to the Declaration of Trust, the "Trust Preferred Securities") and \$10,000.00 aggregate liquidation amount of common securities, having a liquidation amount of \$1,000.00 per security and designated the "Common Securities" of the Trust (together with the further common securities that the Trust may issue pursuant to the Declaration of Trust, the "Common Securities" and, together with the Trust Preferred Securities, the "Securities");

WHEREAS, as incentive for the Holders to purchase the Securities, the Guarantor desires irrevocably and unconditionally to agree, to the extent set forth in this Guarantee, to pay to the Holders of the Securities the Guarantee Payments (as defined herein) and to make certain other payments on the terms and conditions set forth herein; and

WHEREAS, if a Trust Declaration Default (as defined herein) has occurred and is continuing, the rights of holders of the Common Securities to receive Guarantee Payments (as defined herein) under this Guarantee are subordinated to the rights of Holders of Trust Preferred Securities to receive Guarantee Payments under this Guarantee;

NOW, THEREFORE, in consideration of the purchase by each Holder of Securities, which purchase the Guarantor hereby agrees shall benefit the Guarantor, the Guarantor executes and delivers this Guarantee for the benefit of the Holders.

### ARTICLE I INTERPRETATION AND DEFINITIONS

#### **SECTION 1.1 INTERPRETATION AND DEFINITIONS.**

In this Guarantee, unless the context otherwise requires:

- (a) capitalized terms used in this Guarantee but not defined in the preamble above have the respective meanings assigned to them in this Section 1.1;
- (b) a term defined anywhere in this Guarantee has the same meaning throughout;

- (c) all references to “the Guarantee” or “this Guarantee” are to this Guarantee as modified, supplemented or amended from time to time;
- (d) all references in this Guarantee to Articles, Sections and Recitals are to Articles, Sections and Recitals of this Guarantee, unless otherwise specified;
- (e) unless otherwise defined in this Guarantee, a term defined in the Trust Indenture Act has the same meaning when used in this Guarantee;
- (f) a reference to the singular includes the plural and vice versa and a reference to any masculine form of a term shall include the feminine form of a term, as applicable; and
- (g) the following terms have the following meanings:

“Affiliate” has the same meaning as given to that term in Rule 405 of the Securities Act of 1933, as amended, or any successor rule thereunder.

“Business Day” has the meaning specified in the Declaration of Trust.

“Common Securities” has the meaning specified in the Recitals hereto.

“Common Stock” means the common stock, par value \$0.01 per share, of the Guarantor.

“Company Indemnified Person” has the meaning specified in the Declaration of Trust.

“Corporate Trust Office” means the principal office of the Guarantee Trustee at which at any particular time its corporate trust business shall be administered, which office at the date of execution of this Guarantee is located at The Bank of New York Mellon, c/o The Bank of New York Mellon Trust Company, N.A., 2 North LaSalle Street, Suite 1020, Chicago, Illinois 60602, Attention: Corporate Trust Administration, or such other address as the Guarantee Trustee may designate from time to time by notice to the Holders and the Guarantor, or the principal corporate trust office of any successor Guarantee Trustee (or such other address as such successor Guarantee Trustee may designate from time to time by notice to the Holders and the Guarantor).

“Declaration Default” in respect of the Securities means an Event of Default (as defined in the Indenture) has occurred and is continuing in respect of the Junior Subordinated Debt Securities.

“Declaration of Trust” means the Amended and Restated Declaration of Trust, dated as of the date hereof, as amended, modified or supplemented from time to time, among the trustees of the Trust named therein, the Guarantor, as sponsor, and the Holders, from time to time, of undivided beneficial ownership interests in the assets of the Trust.

“Existing Parity Obligations” means (x) the junior subordinated notes issued in connection with the December 1997 offering of 8.00% Capital Trust Pass-Through Securities by North Fork Capital Trust II and the Guarantor’s guarantee thereof; (y) the 8.17% Junior Subordinated Deferrable Interest Debentures, Series B, issued in connection with the April 1998

offering of 8.17% Capital Securities, Series B, by Reliance Capital Trust I and the Guarantor's guarantee thereof; and (z) the junior subordinated notes issued in connection with the June 2003 offering of Floating Rate Preferred Securities by Coastal Capital Trust II and the Guarantor's guarantee thereof.

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

“Fourth Supplemental Indenture” means the Fourth Supplemental Indenture, dated as of August 5, 2009, between Capital One Financial Corporation and the Indenture Trustee.

“Global Security” means a fully registered, global Trust Preferred Security, as defined in the Indenture, representing the Trust Preferred Securities.

“Guarantee Event of Default” means a default by the Guarantor on any of its payment or other obligations under this Guarantee.

“Guarantee Payments” means the following payments or distributions, without duplication, with respect to the Securities, to the extent not paid by or on behalf of the Trust: (i) any accrued and unpaid Distributions (as defined in the Declaration of Trust) that are required to be paid on such Securities to the extent the Trust has sufficient funds available therefor at the time, (ii) the redemption price, plus all accrued and unpaid Distributions to the date of redemption, with respect to any Securities called for redemption by the Trust, to the extent the Trust shall have sufficient funds available therefor at the time or (iii) upon a voluntary or involuntary dissolution, winding-up or termination of the Trust (other than in connection with the distribution of Junior Subordinated Debt Securities to the Holders in exchange for Securities as provided in the Declaration of Trust), the lesser of (a) the aggregate of the liquidation amount and all accrued and unpaid Distributions on the Securities to the date of payment, to the extent the Trust has sufficient funds available therefor and (b) the amount of assets of the Trust remaining available for distribution to Holders in liquidation of the Trust (in either case, the “Liquidation Distribution”).

“Guarantee Trustee” means The Bank of New York Mellon., until a Successor Guarantee Trustee has been appointed and has accepted such appointment pursuant to the terms of this Guarantee and thereafter means each such Successor Guarantee Trustee.

“Holder” means any holder of Securities, as registered on the books and records of the Trust; *provided, however*, that, in determining whether the Holders of the requisite percentage of Trust Preferred Securities have given any request, notice, consent or waiver hereunder, “Holder” shall not include the Guarantor or any Affiliate of the Guarantor or any other obligor on the Trust Preferred Securities.

“Indenture” means the Junior Subordinated Indenture, dated as of June 6, 2006, between Capital One Financial Corporation and The Bank of New York Mellon (formerly known as The Bank of New York) (the “Indenture Trustee”), as supplemented by the Fourth Supplemental Indenture and as may be further amended or supplemented.

“Junior Subordinated Debt Securities” means the series of 10.25% Junior Subordinated Debt Securities due 2039 designated the “10.25% Junior Subordinated Debt Securities due 2039”, held by the Institutional Trustee as defined in the Declaration of Trust.

“List of Holders” has the meaning assigned to it in Section 2.2 hereof.

“Majority in Liquidation Amount” means, except as provided in the terms of the Trust Preferred Securities or by the Trust Indenture Act, Holder(s) of outstanding Securities, voting together as a single class, or, as the context may require, Holders of outstanding Trust Preferred Securities or Holders of outstanding Common Securities, voting separately as a class, who are the record owners of more than 50% of the aggregate liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) of all outstanding Securities of the relevant class. In determining whether the Holders of the requisite amount of Securities have voted, Securities which are owned by the Guarantor or any Affiliate of the Guarantor or any other obligor on the Securities shall be disregarded for the purpose of any such determination.

“Officers’ Certificate” means, with respect to any Person, a certificate signed on behalf of such Person by two Authorized Officers (as defined in the Declaration of Trust) of such Person. Any Officers’ Certificate delivered with respect to compliance with a condition or covenant provided for in this Guarantee shall include:

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

“Parity Securities” means the Existing Parity Obligations and debt securities issued by the Guarantor after the date hereof that have the same rank upon liquidation of the Guarantor as the Junior Subordinated Debt Securities.

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

“Redemption Price” has the meaning specified in the Declaration of Trust.

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

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

“**Successor Guarantee Trustee**” means a successor Guarantee Trustee possessing the qualifications to act as Guarantee Trustee under Section 4.1.

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

“**Trust Preferred Securities**” has the meaning specified in the Recitals hereto.

## **ARTICLE II TRUST INDENTURE ACT**

### **SECTION 2.1 TRUST INDENTURE ACT; APPLICATION.**

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

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

### **SECTION 2.2 LISTS OF HOLDERS OF SECURITIES.**

(a) The Guarantor shall provide the Guarantee Trustee (i) except while the Trust Preferred Securities are represented by one or more Global Securities, at least two Business Days prior to the date for payment of Distributions, a list, in such form as the Guarantee Trustee may reasonably require, of the names and addresses of the Holders of the Securities (“List of Holders”) as of the record date relating to the payment of such Distributions, and (ii) at any other time, within 30 days of receipt by the Guarantor of a written request from the Guarantee Trustee for a List of Holders as of a date no more than 15 days before such List of Holders is given to the Guarantee Trustee; *provided* that the Guarantor shall not be obligated to provide such List of Holders at any time the List of Holders does not differ from the most recent List of Holders given to the Guarantee Trustee by the Guarantor. The Guarantee Trustee shall preserve, in as current a form as is reasonably practicable, all information contained in Lists of Holders given to it, *provided* that the Guarantee Trustee may destroy any List of Holders previously given to it on receipt of a new List of Holders.

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

**SECTION 2.3 REPORTS BY GUARANTEE TRUSTEE.**

Within 60 days after May 15 of each year (commencing with the year of the first anniversary of the issuance of the Securities), the Guarantee Trustee shall provide to the Holders of the Securities such reports as are required by Section 313 of the Trust Indenture Act (if any) in the form and in the manner provided by Section 313 of the Trust Indenture Act. The Guarantee Trustee shall also comply with the requirements of Section 313(d) of the Trust Indenture Act.

**SECTION 2.4 PERIODIC REPORTS TO GUARANTEE TRUSTEE.**

The Guarantor shall provide to the Guarantee Trustee such documents, reports and information as required by Section 314(a) (if any) of the Trust Indenture Act and the compliance certificate required by Section 314(a) of the Trust Indenture Act in the form, in the manner and at the times required by Section 314(a) of the Trust Indenture Act, but in no event later than 120 days after the end of each calendar year.

**SECTION 2.5 EVIDENCE OF COMPLIANCE WITH CONDITIONS PRECEDENT.**

The Guarantor shall provide to the Guarantee Trustee such evidence of compliance with any conditions precedent, if any, provided for in this Guarantee that relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given by an officer pursuant to Section 314(c)(1) may be given in the form of an Officers' Certificate.

**SECTION 2.6 GUARANTEE EVENT OF DEFAULT; WAIVER.**

The Holders of a Majority in Liquidation Amount of the Trust Preferred Securities may, by vote or written consent, on behalf of the Holders of all of the Securities, waive any past Guarantee Event of Default and its consequences. Upon such waiver, any such Guarantee Event of Default shall cease to exist, and any Guarantee Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Guarantee, but no such waiver shall extend to any subsequent or other default or Guarantee Event of Default or impair any right consequent thereon.

**SECTION 2.7 GUARANTEE EVENT OF DEFAULT; NOTICE.**

(a) The Guarantee Trustee shall, within 90 days after the occurrence of a Guarantee Event of Default actually known to a Responsible Officer of the Guarantee Trustee, transmit by mail, first class postage prepaid, to the Holders of the Securities, notices of all such Guarantee Events of Default, unless such defaults have been cured before the giving of such notice; *provided* that the Guarantee Trustee shall be protected in withholding such notice if and so long as a Responsible Officer of the Guarantee Trustee in good faith determines that the withholding of such notice is in the interests of the Holders of the Securities.

(b) The Guarantee Trustee shall not be deemed to have knowledge of any Guarantee Event of Default unless the Guarantee Trustee shall have received written notice thereof or a Responsible Officer of the Guarantee Trustee charged with the administration of this Guarantee Agreement shall have obtained actual knowledge thereof.

**SECTION 2.8 CONFLICTING INTERESTS.**

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

**SECTION 2.9 DISCLOSURE OF INFORMATION.**

The disclosure of information as to the names and addresses of the Holders of the Securities in accordance with Section 312 of the Trust Indenture Act, regardless of the source from which such information was derived, shall not be deemed to be a violation of any existing law, or any law hereafter enacted which does not specifically refer to Section 312 of the Trust Indenture Act, nor shall the Guarantee Trustee be held accountable by reason of mailing any material pursuant to a request made under Section 312(b) of the Trust Indenture Act.

**SECTION 2.10 GUARANTEE TRUSTEE MAY FILE PROOFS OF CLAIM.**

Upon the occurrence of a Guarantee Event of Default, the Guarantee Trustee is hereby authorized to (a) recover judgment, in its own name and as trustee of an express trust, against the Guarantor for the whole amount of any Guarantee Payments remaining unpaid and (b) file such proofs of claim and other papers or documents as may be necessary or advisable in order to have its claims and those of the Holders of the Securities allowed in any judicial proceedings relative to the Guarantor, its creditors or its property.

**ARTICLE III  
POWERS, DUTIES AND RIGHTS OF  
GUARANTEE TRUSTEE**

**SECTION 3.1 POWERS AND DUTIES OF GUARANTEE TRUSTEE.**

(a) This Guarantee shall be held by the Guarantee Trustee on behalf of the Trust for the benefit of the Holders of the Securities, and the Guarantee Trustee shall not transfer its right, title and interest in this Guarantee to any Person except a Holder of Securities exercising his or her rights pursuant to Section 5.4(b) or to a Successor Guarantee Trustee on acceptance by such Successor Guarantee Trustee of its appointment to act as Successor Guarantee Trustee. The right, title and interest of the Guarantee Trustee in and to this Guarantee shall automatically vest in any Successor Guarantee Trustee, and such vesting and succession of title shall be effective whether or not conveyancing documents have been executed and delivered pursuant to the appointment of such Successor Guarantee Trustee.

(b) If a Guarantee Event of Default actually known to a Responsible Officer of the Guarantee Trustee has occurred and is continuing, the Guarantee Trustee shall enforce this Guarantee for the benefit of the Holders of the Securities.

(c) The Guarantee Trustee, before the occurrence of any Guarantee Event of Default and after the curing of all Guarantee Events of Default that may have occurred, shall undertake to perform only such duties as are specifically set forth in this Guarantee, and no implied covenants shall be read into this Guarantee against the Guarantee Trustee. In case a Guarantee

Event of Default has occurred (that has not been cured or waived pursuant to Section 2.6) and is actually known to a Responsible Officer of the Guarantee Trustee, the Guarantee Trustee shall exercise such of the rights and powers vested in it by this Guarantee, and use the same degree of care and skill in its exercise thereof, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

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

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

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

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

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

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

(iv) no provision of this Guarantee shall require the Guarantee Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if the Guarantee Trustee shall have reasonable grounds for believing that the repayment of such

funds or protection from liability is not reasonably assured to it under the terms of this Guarantee or if the Guarantee Trustee shall have reasonable grounds for believing that an indemnity, reasonably satisfactory to the Guarantee Trustee, against such risk or liability is not reasonably assured to it under the terms of this Guarantee.

**SECTION 3.2 CERTAIN RIGHTS OF GUARANTEE TRUSTEE.**

(a) Subject to the provisions of Section 3.1:

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

(ii) Any direction or act of the Guarantor contemplated by this Guarantee shall be sufficiently evidenced by an Officers' Certificate;

(iii) Whenever, in the administration of this Guarantee, the Guarantee Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Guarantee Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part, request and conclusively rely upon an Officers' Certificate which, upon receipt of such request, shall be promptly delivered by the Guarantor;

(iv) The Guarantee Trustee shall have no duty to see to any recording, filing or registration of any instrument (or any re-recording, re-filing or re-registration thereof);

(v) The Guarantee Trustee may consult with counsel, and the advice or opinion of such counsel with respect to legal matters shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with such advice or opinion. Such counsel may be counsel to the Guarantor or any of its Affiliates and may include any of its employees. The Guarantee Trustee shall have the right at any time to seek instructions concerning the administration of this Guarantee from any court of competent jurisdiction;

(vi) The Guarantee Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Guarantee at the request or direction of any Holder, unless such Holder shall have provided to the Guarantee Trustee such security and indemnity, reasonably satisfactory to the Guarantee Trustee, against the costs, expenses (including attorneys' fees and expenses and the expenses of the Guarantee Trustee's agents, nominees or custodians) and liabilities that might be incurred by it in complying with such request or direction, including such reasonable advances as may be requested by the Guarantee Trustee; *provided* that nothing contained in this Section 3.2(a)(vi) shall be taken to relieve the Guarantee Trustee, upon the occurrence of a Guarantee Event of Default, of its obligation to exercise the rights and powers vested in it by this Guarantee;

(vii) The Guarantee Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Guarantee Trustee, in its discretion, may make such reasonable further inquiry or investigation into such facts or matters as it may see fit at the expense of the Guarantor and shall incur no liability of any kind by reason of such inquiry or investigation;

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

(ix) Any action taken by the Guarantee Trustee or its agents hereunder shall bind the Holders, and the signature of the Guarantee Trustee or its agents alone shall be sufficient and effective to perform any such action. No third party shall be required to inquire as to the authority of the Guarantee Trustee to so act or as to its compliance with any of the terms and provisions of this Guarantee, both of which shall be conclusively evidenced by the Guarantee Trustee's or its agent's taking such action;

(x) Whenever in the administration of this Guarantee, the Guarantee Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder, the Guarantee Trustee (i) may request written instructions from the Holders of a Majority in Liquidation Amount of the Securities, (ii) may refrain from enforcing such remedy or right or taking such other action until such written instructions are received and (iii) shall be protected in conclusively relying on or acting in accordance with such written instructions;

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

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

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

(xiv) In no event shall the Guarantee Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear

or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Guarantee Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

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

#### **ARTICLE IV GUARANTEE TRUSTEE**

##### **SECTION 4.1 GUARANTEE TRUSTEE; ELIGIBILITY.**

(a) There shall at all times be a Guarantee Trustee which shall:

(i) not be an Affiliate of the Guarantor; and

(ii) be a Person organized and doing business under the laws of the United States of America or any state or territory thereof or of the District of Columbia, or a corporation or other Person permitted by the Securities and Exchange Commission to act as an institutional trustee under the Trust Indenture Act, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least fifty million U.S. dollars (\$50,000,000), and subject to supervision or examination by federal, state, territorial or District of Columbia authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the supervising or examining authority referred to above, then, for the purposes of this Section 4.1(a)(ii), the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(b) If at any time the Guarantee Trustee shall cease to be eligible to so act under Section 4.1(a), the Guarantee Trustee shall immediately resign in the manner and with the effect set out in Section 4.2(c).

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

##### **SECTION 4.2 APPOINTMENT, REMOVAL AND RESIGNATION OF GUARANTEE TRUSTEE.**

(a) Subject to Section 4.2(b), unless a Guarantee Event of Default shall have occurred and be continuing, the Guarantee Trustee may be appointed or removed with or without cause at any time by the Guarantor.

(b) The Guarantee Trustee shall not be removed in accordance with Section 4.2(a) until a Successor Guarantee Trustee has been appointed and has accepted such appointment by written instrument executed by such Successor Guarantee Trustee and delivered to the Guarantor.

(c) The Guarantee Trustee appointed to office shall hold such office until a Successor Guarantee Trustee shall have been appointed or until its removal or resignation. The Guarantee Trustee may resign from office (without need for prior or subsequent accounting) by an instrument in writing executed by the Guarantee Trustee and delivered to the Guarantor, which resignation shall not take effect until a Successor Guarantee Trustee has been appointed and has accepted such appointment by instrument in writing executed by such Successor Guarantee Trustee and delivered to the Guarantor and the resigning Guarantee Trustee.

(d) If no Successor Guarantee Trustee shall have been appointed and accepted appointment as provided in this Section 4.2 within 60 days after delivery to the Guarantor of an instrument of removal or resignation, the removed or resigning Guarantee Trustee may petition at the expense of the Guarantor any court of competent jurisdiction for appointment of a Successor Guarantee Trustee. Such court may thereupon, after prescribing such notice, if any, as it may deem proper, appoint a Successor Guarantee Trustee.

(e) No Guarantee Trustee shall be liable for the acts or omissions to act of any Successor Guarantee Trustee.

(f) Upon termination of this Guarantee or removal or resignation of the Guarantee Trustee pursuant to this Section 4.2, the Guarantor shall pay to the Guarantee Trustee all amounts owing for fees and reimbursement of expenses that have accrued to the date of such termination, removal or resignation.

## **ARTICLE V GUARANTEE**

### **SECTION 5.1 GUARANTEE.**

The Guarantor irrevocably and unconditionally agrees to pay in full to the Holders the Guarantee Payments (without duplication of amounts theretofore paid by the Trust), as and when due, regardless of any defense, right of set-off or counterclaim that the Trust may have or assert. The Guarantor's obligation to make a Guarantee Payment may be satisfied by direct payment of the required amounts by the Guarantor to the Holders or by causing the Trust to pay such amounts to the Holders. Notwithstanding anything to the contrary herein, the Guarantor retains all of its rights under the Indenture to defer the interest payments on the Junior Subordinated Debt Securities pursuant to the terms thereof and the Guarantor shall not be obligated hereunder to make any Guarantee Payments during any Extended Interest Payment Period (as defined in the Indenture) with respect to the Distributions (as defined in the Declaration of Trust) on the Securities.

**SECTION 5.2 WAIVER OF NOTICE AND DEMAND.**

The Guarantor hereby waives notice of acceptance of this Guarantee and of any liability to which it applies or may apply, presentment, demand for payment, any right to require a proceeding first against the Trust or any other Person before proceeding against the Guarantor, protest, notice of nonpayment, notice of dishonor, notice of redemption and all other notices and demands.

**SECTION 5.3 OBLIGATIONS NOT AFFECTED.**

The obligations, covenants, agreements and duties of the Guarantor under this Guarantee shall be absolute and unconditional and shall remain in full force and effect until the entire liquidation amount of all outstanding Securities shall have been paid and such obligation shall in no way be affected or impaired by reason of the happening from time to time of any event, including, without limitation, the following, whether or not with notice to, or the consent of, the Guarantor:

(a) The release or waiver, by operation of law or otherwise, of the performance or observance by the Trust of any express or implied agreement, covenant, term or condition relating to the Securities to be performed or observed by the Trust;

(b) The extension of time for the payment by the Trust of all or any portion of the Distributions, Redemption Price, Liquidation Distribution or any other sums payable under the terms of the Securities or the extension of time for the performance of any other obligation under, arising out of, or in connection with the Securities (other than an extension of time for payment of Distributions, Redemption Price, Liquidation Distribution or other sum payable that results from the extension of any interest payment period on the Junior Subordinated Debt Securities);

(c) Any failure, omission, delay or lack of diligence on the part of the Institutional Trustee or the Holders to enforce, assert or exercise any right, privilege, power or remedy conferred on the Institutional Trustee or the Holders pursuant to the terms of the Securities, or any action on the part of the Trust granting indulgence or extension of any kind;

(d) The voluntary or involuntary liquidation, dissolution, sale of any collateral, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of debt of, or other similar proceedings affecting, the Trust or any of the assets of the Trust;

(e) Any invalidity of, or defect or deficiency in, the Securities;

(f) The settlement or compromise of any obligation guaranteed hereby or hereby incurred; or

(g) Any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor, it being the intent of this Section 5.3 that the obligations of the Guarantor hereunder shall be absolute and unconditional under any and all circumstances.

There shall be no obligation of the Guarantee Trustee or the Holders to give notice to, or obtain consent of, the Guarantor or any other Person with respect to the happening of any of the foregoing.

No setoff, counterclaim, reduction or diminution of any obligation, or any defense of any kind or nature that the Guarantor has or may have against any Holder shall be available hereunder to the Guarantor against such Holder to reduce the payments to it under this Guarantee.

#### **SECTION 5.4 RIGHTS OF HOLDERS.**

(a) The Holders of at least a Majority in Liquidation Amount of the Securities have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Guarantee Trustee in respect of this Guarantee or to direct the exercise of any trust or power conferred upon the Guarantee Trustee under this Guarantee.

(b) If the Guarantee Trustee fails to enforce this Guarantee, then any Holder of Securities may, subject to the subordination provisions of Section 6.2, institute a legal proceeding directly against the Guarantor to enforce the Guarantee Trustee's rights under this Guarantee without first instituting a legal proceeding against the Trust, the Guarantee Trustee or any other person or entity. In addition, if the Guarantor has failed to make a Guarantee Payment, a Holder of Securities may, subject to the subordination provisions of Section 6.2, directly institute a proceeding against the Guarantor for enforcement of the Guarantee for such payment to the Holder of the Securities of the principal of or interest on the Junior Subordinated Debt Securities on or after the respective due dates specified in the Junior Subordinated Debt Securities, and the amount of the payment will be based on the Holder's *pro rata* share of the amount due and owing on all of the Securities. The Guarantor hereby waives any right or remedy to require that any action on this Guarantee be brought first against the Trust or any other person or entity before proceeding directly against the Guarantor.

#### **SECTION 5.5 GUARANTEE OF PAYMENT.**

This Guarantee creates a guarantee of payment and not of collection.

#### **SECTION 5.6 SUBROGATION.**

The Guarantor shall be subrogated to all (if any) rights of the Holders of Securities against the Trust in respect of any amounts paid to such Holders by the Guarantor under this Guarantee; *provided, however*, that the Guarantor shall not (except to the extent required by mandatory provisions of law) be entitled to enforce or exercise any right that it may acquire by way of subrogation or any indemnity, reimbursement or other agreement, in all cases as a result of payment under this Guarantee, if at the time of any such payment, any amounts are due and unpaid under this Guarantee. If any amount shall be paid to the Guarantor in violation of the preceding sentence, the Guarantor agrees to hold such amount in trust for the Holders and to pay over such amount to the Guarantee Trustee for the benefit of the Holders.

**SECTION 5.7 INDEPENDENT OBLIGATIONS.**

The Guarantor acknowledges that its obligations hereunder are independent of the obligations of the Trust with respect to the Securities, and that the Guarantor shall be liable as principal and as debtor hereunder to make Guarantee Payments pursuant to the terms of this Guarantee notwithstanding the occurrence of any event referred to in subsections 5.3(a) through 5.3(g), inclusive, hereof.

**ARTICLE VI  
LIMITATION OF TRANSACTIONS; SUBORDINATION**

**SECTION 6.1 LIMITATION OF TRANSACTIONS.**

So long as any Securities remain outstanding, (i) if there shall have occurred an Event of Default (as defined in the Indenture) with respect to the Junior Subordinated Debt Securities, (ii) if there shall have occurred a Guarantee Event of Default or (iii) during any Extended Interest Payment Period as provided in the Indenture, then the Guarantor shall not, and shall not permit any subsidiary of the Guarantor to, (x) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any of the Guarantor's capital stock, (y) make any payment of principal, interest or premium, if any, on or repay, repurchase or redeem any Parity Securities or debt securities of the Guarantor that rank junior to the Junior Subordinated Debt Securities or (z) make any guarantee payments on any guarantee by the Guarantor of the debt securities of any subsidiary of the Guarantor if such guarantee ranks equally with or junior in interest to the Junior Subordinated Debt Securities (other than (a) dividends or distributions on any class of the Guarantor's capital stock payable in the same class of the Guarantor's capital stock, (b) payments under this Guarantee, (c) any declaration of a dividend in connection with the implementation of a shareholders' rights plan or the redemption or repurchase of any such rights pursuant thereto, (d) purchases of Common Stock related to (x) the issuance of Common Stock or rights under any of the Guarantor's benefits plans for its directors, officers or employees, (y) the issuance of Common Stock or rights under a dividend reinvestment and stock purchase plan, or (z) the issuance of Common Stock, or securities convertible into Common Stock, as consideration in an acquisition transaction that was entered into before the beginning of the Extended Interest Payment Period, and (e) solely in the case of any of the Guarantor's Subsidiaries, pay dividends on distributions on the capital stock of such Subsidiary to the Guarantor or one of the Guarantor's affiliates).

**SECTION 6.2 RANKING.**

This Guarantee will constitute an unsecured obligation of the Guarantor and will rank subordinate and junior in right of payment to all Senior Indebtedness (as defined in Section 2.1(o) of the Fourth Supplemental Indenture) of the Guarantor in the same manner and to the same extent as set forth in Article XIV of the Indenture.

**SECTION 6.3 SUBORDINATION OF COMMON SECURITIES.**

If a Declaration Default has occurred and is continuing under the Declaration of Trust, the rights of the Holders of the Common Securities to receive Guarantee Payments hereunder shall be subordinated to the rights of the Holders of the Trust Preferred Securities to receive Guarantee Payments under this Guarantee.

**ARTICLE VII  
TERMINATION**

**SECTION 7.1 TERMINATION.**

This Guarantee shall terminate upon (i) full payment of the Redemption Price of all Securities, (ii) distribution of the Junior Subordinated Debt Securities to the Holders of all the Securities or (iii) full payment of the amounts payable in accordance with the Declaration of Trust upon liquidation of the Trust. Notwithstanding the foregoing, this Guarantee will continue to be effective or will be reinstated, as the case may be, if at any time any Holder of Securities must restore payment of any sums paid under the Securities or under this Guarantee.

**ARTICLE VIII  
INDEMNIFICATION**

**SECTION 8.1 INDEMNIFICATION.**

The Guarantor agrees to indemnify each Company Indemnified Person, the Institutional Trustee, the Delaware Trustee (as each such term is defined in the Declaration of Trust) and the Guarantee Trustee for, and to hold each such Person harmless against any loss, claim, damage, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the reasonable costs and expenses of defending itself against, or investigating, any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. The provisions of this Section 8.1 shall survive the termination of this Guarantee or the resignation or removal of the Guarantee Trustee.

**ARTICLE IX  
MISCELLANEOUS**

**SECTION 9.1 SUCCESSORS AND ASSIGNS.**

All guarantees and agreements contained in this Guarantee shall bind the successors, assigns, receivers, trustees and representatives of the Guarantor and shall inure to the benefit of the Holders of the Securities then outstanding. Except in connection with a consolidation, merger or sale involving the Guarantor that is permitted under Article VIII of the Indenture and pursuant to which the successor or assignee agrees in writing to perform the Guarantor's obligations hereunder, the Guarantor shall not assign its obligations hereunder.

**SECTION 9.2 AMENDMENTS.**

Except with respect to any changes that do not materially adversely affect the rights of the Holders (in which case no consent of the Holders will be required), this Guarantee may not be amended without the prior approval of the Holders of not less than a Majority in Liquidation Amount of the Securities. The provisions of Section 12.2 of the Declaration of Trust with respect to meetings of, and action by written consent of, the Holders of the Securities apply to the giving of such approval.

**SECTION 9.3 NOTICES.**

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

(a) If given to the Guarantee Trustee, at the Guarantee Trustee's mailing address set forth below (or such other address as the Guarantee Trustee may give notice of to the Guarantor and the Holders of the Securities):

The Bank of New York Mellon  
c/o The Bank of New York Mellon Trust Company, N.A.  
2 North LaSalle Street, Suite 1020  
Chicago, Illinois 60602

(b) If given to the Guarantor, at the Guarantor's mailing addresses set forth below (or such other address as the Guarantor may give notice of to the Guarantee Trustee and the Holders of the Securities):

Capital One Financial Corporation  
1680 Capital One Drive  
McLean, Virginia 22102  
Facsimile No.: (703) 720-2165  
Attention: Director of Capital Markets

(c) If given to any Holder of Securities, at the address set forth on the books and records of the Trust.

All such notices shall be deemed to have been given when received in person, telecopied with receipt confirmed, or mailed by first class mail, postage prepaid, except that if a notice or other document is refused delivery or cannot be delivered because of a changed address of which no notice was given, such notice or other document shall be deemed to have been delivered on the date of such refusal or inability to deliver.

**SECTION 9.4 BENEFIT.**

This Guarantee is solely for the benefit of the Holders of the Securities and, subject to Section 3.1(a), is not separately transferable from the Securities.

**SECTION 9.5 GOVERNING LAW; WAIVER OF JURY TRIAL**

**THIS GUARANTEE SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTEE, THE SECURITIES OR THE TRANSACTION CONTEMPLATED HEREBY.**



IN WITNESS WHEREOF, this Guarantee is executed as of the day and year first above written.

**CAPITAL ONE FINANCIAL CORPORATION,**  
as Guarantor

By: /s/ Thomas A. Feil

Name: Thomas A. Feil

Title: Assistant Treasurer

**THE BANK OF NEW YORK MELLON,**  
as Guarantee Trustee

By: /s/ Christopher Greene

Name: Christopher Greene

Title: Vice President

GIBSON, DUNN & CRUTCHER LLP  
LAWYERSA REGISTERED LIMITED LIABILITY PARTNERSHIP  
INCLUDING PROFESSIONAL CORPORATIONS

---

200 Park Avenue, New York, New York 10166-0193  
(212) 351-4000

www.gibsondunn.com

August 5, 2009

Direct Dial  
(212) 351-4000Client Matter No.  
67293-00091Fax No.  
(212) 351-4035Capital One Financial Corporation  
1680 Capital One Drive  
McLean, Virginia 22102Re: *Capital One Financial Corporation*  
*Registration Statement on Form S-3 (Registration No. 333-159085)*  
*Capital One Capital V 10.25% Cumulative Trust Preferred Securities*  
*Capital One Financial Corporation 10.25% Junior Subordinated Debt Securities*

Ladies and Gentlemen:

We have examined: (i) the Registration Statement on Form S-3 (Registration No. 333-159085) filed with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"), on May 8, 2009 of Capital One Financial Corporation (the "Company") for the registration of the Company's senior debt securities, subordinated debt securities, junior subordinated debt securities, preferred stock, depositary shares, common stock, purchase contracts, warrants and units (the "Registration Statement"); (ii) the prospectus dated May 8, 2009 forming a part thereof, together with the documents incorporated therein by reference (the "Base Prospectus"); (iii) the preliminary prospectus supplement dated July 29, 2009, in the form filed with the Commission pursuant to Rule 424(b) under the Securities Act on July 29, 2009 (the "Preliminary Prospectus"); and (iv) the final prospectus supplement dated July 29, 2009 in the form filed with the Commission pursuant to Rule 424(b) under the Securities Act on July 30, 2009 (the "Final Prospectus", and together with the Base Prospectus and Preliminary Prospectus, the "Prospectus") in connection with the offering and sale by Capital One Capital V, a Delaware statutory trust (the "Trust") of 1,000,000 10.25% Cumulative Trust Preferred Securities (the "Trust Preferred Securities"). The Trust Preferred Securities represent undivided beneficial ownership interests in the assets of the Trust, which consist solely of 10.25% Junior Subordinated Debt Securities of the Company due 2039 (the "Junior Subordinated Debt Securities"). Pursuant to a Guarantee Agreement dated August 5, 2009 between the Company and The Bank of New York Mellon, as guarantee trustee, the Company will guarantee the Trust Preferred Securities to the extent described in the Registration Statement and the Prospectus forming a part thereof (the "Guarantee").

We have examined originals, or photostatic or certified copies, of such records of the Company and certificates of officers of the Company and of public officials and such documents as we have deemed relevant and necessary as the basis for the opinion set forth below. In our examination, we have assumed the genuineness of all signatures, the legal capacity and competency of all natural persons, the authenticity of all documents submitted to us as originals and the conformity to original documents of all documents submitted to us as copies. As to any facts material to this opinion, we have relied to the extent we deemed appropriate and without independent investigation upon statements and representations of officers and other representatives of the Company and others.

Based upon the foregoing examination and in reliance thereon, and subject to the assumptions stated and in reliance on statements of fact contained in the documents that we have examined, we are of the opinion that (a) the Junior Subordinated Debt Securities constitute legal, valid and binding obligations of the Company and (b) the Guarantee constitutes a legal, valid and binding obligation of the Company.

We render no opinion herein as to matters involving the laws of any jurisdiction other than the State of New York and the United States of America. This opinion is limited to the current laws of the States of New York and the current federal laws of the United States, and to the current judicial interpretations thereof and to the facts as they exist on the date hereof. We assume no obligation to revise or supplement our opinion should the present laws, or the interpretation thereof, be changed in respect of any circumstances or events that occur subsequent to the date hereof.

We consent to the filing of this opinion as an exhibit to the Company's Current Report on Form 8-K filed with the Commission on August 5, 2009, and we further consent to the use of our name under the caption "Validity of the Securities" in the Registration Statement and the prospectus that forms a part thereof. In giving these consents, 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 and Regulations of the Commission.

Very truly yours,

/s/ Gibson, Dunn & Crutcher LLP

[Letterhead of Richards, Layton &amp; Finger, P.A.]

August 5, 2009

Capital One Capital V  
c/o Capital One Financial Corporation  
1680 Capital One Drive  
McLean, Virginia 22102

Re: Capital One Capital V

Ladies and Gentlemen:

We have acted as special Delaware counsel for Capital One Financial Corporation, a Delaware corporation ("Capital One"), and Capital One Capital V, a Delaware statutory trust (the "Trust"), in connection with the matters set forth herein. At your request, this opinion is being furnished to you.

For purposes of giving the opinions hereinafter set forth, our examination of documents has been limited to the examination of originals, copies or forms of the following:

- (a) The Certificate of Trust of the Trust, dated as of May 6, 2009 (the "Certificate"), as filed in the office of the Secretary of State of the State of Delaware (the "Secretary of State") on May 6, 2009;
- (b) The Declaration of Trust of the Trust, dated as of May 6, 2009, among Capital One, as sponsor, and the trustees of the Trust named therein;
- (c) The Registration Statement on Form S-3, including a preliminary prospectus (the "Prospectus"), relating to the trust preferred securities of the Trust representing preferred undivided beneficial interests in the assets of the Trust (each, a "Preferred Security" and collectively, the "Preferred Securities"), as filed by Capital One, the Trust, Capital One Capital VI, Capital One Capital VII and Capital One Capital VIII with the Securities and Exchange Commission on May 8, 2009 (the "Registration Statement");
- (d) The Current Report on Form 8-K, relating to the Preferred Securities, as filed by Capital One with the Securities and Exchange Commission on or about August 5, 2009 (the "Form 8-K");
- (e) The Amended and Restated Declaration of Trust of the Trust (including Exhibits A-1 and A-2 thereto), dated as of August 5, 2009 (the "Declaration of Trust"), among Capital One, as sponsor, the trustees of the Trust named therein, and the holders, from time to time, of undivided beneficial interests in the assets of the Trust; and

(f) A Certificate of Good Standing for the Trust, dated August 4, 2009, obtained from the Secretary of State.

Capitalized terms used herein and not otherwise defined are used as defined in the Declaration of Trust.

For purposes of this opinion, we have not reviewed any documents other than the documents listed in paragraphs (a) through (f) above. In particular, we have not reviewed any document (other than the documents listed in paragraphs (a) through (f) above) that is referred to in or incorporated by reference into the documents reviewed by us. We have assumed that there exists no provision in any document that we have not reviewed that is inconsistent with the opinions stated herein. We have conducted no independent factual investigation of our own but rather have relied solely upon the foregoing documents, the statements and information set forth therein and the additional matters recited or assumed herein, all of which we have assumed to be true, complete and accurate in all material respects.

With respect to all documents examined by us, we have assumed (i) the authenticity of all documents submitted to us as authentic originals, (ii) the conformity with the originals of all documents submitted to us as copies or forms, and (iii) the genuineness of all signatures.

For purposes of this opinion, we have assumed (i) that the Declaration of Trust constitutes the entire agreement among the parties thereto with respect to the subject matter thereof, including with respect to the creation, operation and termination of the Trust, and that the Declaration of Trust and the Certificate are in full force and effect and have not been amended, (ii) except to the extent provided in paragraph 1 below, that each of the parties to the documents examined by us has been duly created, organized or formed, as the case may be, and is validly existing in good standing under the laws of the jurisdiction governing its creation, organization or formation, (iii) the legal capacity of natural persons who are signatories to the documents examined by us, (iv) that each of the parties to the documents examined by us has the power and authority to execute and deliver, and to perform its obligations under, such documents, (v) that each of the parties to the documents examined by us has duly authorized, executed and delivered such documents, (vi) that each Person to whom a Preferred Security was issued by the Trust (collectively, the "Preferred Security Holders") received a certificate (in substantially the form attached as Exhibit A-1 to the Declaration of Trust) for such Preferred Security and have paid for the Preferred Security acquired by it, in accordance with the Declaration of Trust and the Registration Statement, and (vii) that the Preferred Securities were issued and sold to the Preferred Security Holders in accordance with the Declaration of Trust and the Registration Statement. We have not participated in the preparation of the Registration Statement or the Form 8-K, and assume no responsibility for their contents.

This opinion is limited to the laws of the State of Delaware (excluding the securities laws and blue sky laws of the State of Delaware), and we have not considered and express no opinion on the laws of any other jurisdiction, including federal laws and rules and regulations relating thereto. Our opinions are rendered only with respect to Delaware laws and rules, regulations and orders thereunder that are currently in effect.

Based upon the foregoing, and upon our examination of such questions of law and statutes of the State of Delaware as we have considered necessary or appropriate, and subject to the assumptions, qualifications, limitations and exceptions set forth herein, we are of the opinion that:

1. The Trust has been duly created and is validly existing in good standing as a statutory trust under the Delaware Statutory Trust Act (12 Del. C. § 3801, et seq.).

2. The Preferred Securities represent valid and, subject to the qualifications set forth in paragraph 3 below, fully paid and nonassessable undivided beneficial interests in the assets of the Trust.

3. The Preferred Security Holders, as beneficial owners of the Trust, are entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware. We note that the Preferred Security Holders may be obligated to make payments as set forth in the Declaration of Trust.

We consent to the filing of this opinion with the Securities and Exchange Commission as an exhibit to the Form 8-K. In addition, we hereby consent to the use of our name under the heading "Certain Legal Matters" in the Prospectus. In giving the foregoing consents, we do not thereby admit that we come within the category of Persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or the rules and regulations of the Securities and Exchange Commission thereunder. Except as stated above, without our prior written consent, this opinion may not be furnished or quoted to, or relied upon by, any other Person for any purpose.

Very truly yours,

/s/ Richards, Layton & Finger, P.A.

BJK/ARH

GIBSON, DUNN & CRUTCHER LLP  
LAWYERS  
A REGISTERED LIMITED LIABILITY PARTNERSHIP  
INCLUDING PROFESSIONAL CORPORATIONS

---

333 South Grand Avenue, Los Angeles, California 90071-3197  
(213) 229-7000

www.gibsondunn.com

August 5, 2009

Direct Dial  
(213) 229-7000  
Fax No.

Client Matter No.  
67293-00091

Capital One Financial Corporation  
1680 Capital One Drive  
Suite 1400  
McLean, VA 22102

Re: *Capital One Capital V \$1 Billion 10.25% Cumulative Trust Preferred Securities*

Ladies and Gentlemen:

We have acted as special tax counsel to Capital One Financial Corporation, a Delaware corporation (the "Company") and Capital One Capital V (the "Trust"), a statutory trust created under the laws of the State of Delaware, in connection with the preparation and filing of a Prospectus Supplement dated July 29, 2009 (the "Prospectus Supplement"), with the Securities and Exchange Commission, pursuant to the Securities Act of 1933, as amended, relating to (A) 1,000,000 of the Trust's 10.25% Cumulative Trust Preferred Securities (the "TP Securities") to be issued by the Trust, (B) \$1,000,000,000 aggregate principal amount of 10.25% Junior Subordinated Debt Securities of the Company due 2039, and (C) a guarantee of payment on the TP Securities to be issued by the Company.

We have examined such documents and have reviewed such questions of law, as we have considered necessary and appropriate for the purposes of our opinion set forth below. In rendering our opinions set forth below, we have assumed the authenticity of all documents submitted to us as originals, the genuineness of all signatures and the conformity to authentic originals of all documents submitted to us as copies. We have also assumed the legal capacity for all purposes relevant hereto of all natural persons and, with respect to all parties to agreements or instruments relevant hereto other than the Company and the Trust, that such parties had the requisite power and authority (corporate or otherwise) to execute, deliver and perform such agreements or instruments, that such agreements or instruments have been duly authorized by all requisite action (corporate or otherwise), executed and delivered by such parties and that such

agreements or instruments are the valid, binding and enforceable obligations of such parties. As to questions of fact material to our opinion, we have relied upon factual statements and factual representations of officers, trustees and other representatives of the Company and the Trust, and others.

Based upon and subject to the limitations, qualifications, exceptions and assumptions set forth herein, we are of the opinion that:

The statements made in the Prospectus Supplement, under the caption "Material United States Federal Income Tax Consequences," to the extent such statements describe the federal tax consequences of the purchase, beneficial ownership, and disposition of the TP Securities to the holders thereof described therein, are accurate in all material respects. All such statements are based upon current law, which is subject to change, possibly with retroactive effect. Further, there can be no assurance that the Internal Revenue Service or a court will not take a contrary position.

Our opinions expressed above are limited to the federal tax laws of the United States of America. We assume no obligation to revise or supplement this letter in the event of any changes in law or fact arising after the date hereof.

We consent to the filing of this opinion as an exhibit to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 5, 2009, and we further consent to the use of our name under the caption "Material United States Federal Income Tax Consequences" in the Registration Statement and the prospectus that forms a part thereof. In giving these consents, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended or the Rules and Regulations of the Securities and Exchange Commission.

Very truly yours,

/s/ Gibson, Dunn & Crutcher LLP