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 Report: February 5, 2007

CAPITAL ONE FINANCIAL CORPORATION
(Exact name of registrant as specified in its charter)

Delaware	**1-13300**	**54-1719854**
(State or other jurisdiction of incorporation)	**(Commission File Number)**	**(IRS Employer Identification No.)**

1680 Capital One Drive, **McLean, Virginia**	**22102**
(Address of principal executive offices)	**(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 February 5, 2007, Capital One Financial Corporation ("Capital One" or the "Company"), and Capital One Capital IV, a statutory trust formed under the laws of the State of Delaware (the "Trust"), closed the public offering of $500,000,000 aggregate liquidation amount of the Trust's 6.745% Capital Securities (the "Capital Securities"), representing preferred beneficial interests in the Trust, pursuant to an Underwriting Agreement dated January 29, 2007, among the Company, the Trust and J.P. Morgan Securities Inc., Banc of America Securities LLC, Credit Suisse Securities (USA) LLC, and Wachovia Capital Markets, LLC, as representatives (the "Representatives") of the underwriters named in Schedule I thereto (collectively, the "Underwriters"). The Capital 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, as Guarantee Trustee. The proceeds from the sale of the Capital Securities, together with the proceeds from the sale by the Trust of its common securities, were invested by the Trust in 6.745% Capital Efficient Notes due 2082 (the "CENts"), issued pursuant to a Junior Subordinated Indenture dated June 6, 2006, as supplemented by the Third Supplemental Indenture dated February 5, 2007 (the "Indenture"), between the Company and The Bank of New York, as Indenture Trustee. The Capital Securities, the CENts and the Guarantee have been registered under the Securities Act of 1933, as amended, by a registration statement on Form S-3 (File No. 333-133943).

On February 5, 2007, in connection with the issuance of the Capital Securities, Sullivan & Cromwell LLP rendered an opinion regarding certain tax matters. A copy of that opinion is attached as Exhibit 8.1 to this report.

On February 5, 2007, in connection with the closing of the Capital Securities offering, the Company entered into a Replacement Capital Covenant (the "Covenant"), whereby the Company agreed for the benefit of certain of its debtholders named therein that it would not redeem or repurchase the CENts unless such repurchases or redemptions are made from the proceeds of the sale of specified securities with equity-like characteristics that are the same as, or more equity-like than, the applicable characteristics of the Capital Securities or the CENts at the time of such redemption or repurchase. A copy of the Covenant is attached hereto as Exhibit 99.1 to this report.

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

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit	Description
1.1	Underwriting Agreement dated January 29, 2007, among Capital One Financial Corporation, Capital One Capital IV and J.P. Morgan Securities Inc., Banc of America Securities LLC, Credit Suisse Securities (USA) LLC, and Wachovia Capital Markets, LLC, as Representatives of the Underwriters
4.1	Indenture dated June 6, 2006 between Capital One Financial Corporation and The Bank of New York as Indenture Trustee (incorporated herein by reference to Exhibit 4.1 of the Form 8-K filed on June 12, 2006)
4.2	Third Supplemental Indenture dated February 5, 2007 between Capital One Financial Corporation and The Bank of New York as Indenture Trustee

4.3	Amended and Restated Declaration of Trust of Capital One Capital IV dated February 5, 2007 between Capital One Financial Corporation as Sponsor, The Bank of New York as Institutional Trustee, The Bank of New York (Delaware) as Delaware Trustee and the Administrative Trustees named therein
4.4	Guarantee Agreement dated February 5, 2007 between Capital One Financial Corporation and The Bank of New York as Guarantee Trustee
4.5	Specimen Capital Security Certificate (included as part of Exhibit 4.3)
4.6	Specimen Capital Efficient Note (included as part of Exhibit 4.2)
8.1	Opinion of Sullivan & Cromwell LLP dated February 5, 2007, regarding certain tax matters
99.1	Replacement Capital Covenant of Capital One Financial Corporation dated February 5, 2007

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: February 7, 2007

By: /s/ John G. Finneran Jr.
John G. Finneran Jr.
General Counsel and Corporate Secretary

EXHIBIT INDEX

Exhibit	Description
1.1	Underwriting Agreement dated January 29, 2007, among Capital One Financial Corporation, Capital One Capital IV and J.P. Morgan Securities Inc., Banc of America Securities LLC, Credit Suisse Securities (USA) LLC, and Wachovia Capital Markets, LLC, as Representatives of the Underwriters
4.1	Indenture dated June 6, 2006 between Capital One Financial Corporation and The Bank of New York as Indenture Trustee (incorporated herein by reference to Exhibit 4.1 of the Form 8-K filed on June 12, 2006)
4.2	Third Supplemental Indenture dated February 5, 2007 between Capital One Financial Corporation and The Bank of New York as Indenture Trustee
4.3	Amended and Restated Declaration of Trust of Capital One Capital IV dated February 5, 2007 between Capital One Financial Corporation as Sponsor, The Bank of New York as Institutional Trustee, The Bank of New York (Delaware) as Delaware Trustee and the Administrative Trustees named therein
4.4	Guarantee Agreement dated February 5, 2007 between Capital One Financial Corporation and The Bank of New York as Guarantee Trustee
4.5	Specimen Capital Security Certificate (included as part of Exhibit 4.3)
4.6	Specimen Capital Efficient Note (included as part of Exhibit 4.2)
8.1	Opinion of Sullivan & Cromwell LLP dated February 5, 2007, regarding certain tax matters
99.1	Replacement Capital Covenant of Capital One Financial Corporation dated February 5, 2007

Exhibit 1.1

$500,000,000

CAPITAL ONE CAPITAL IV

6.745% Capital 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

January 29, 2007

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

Banc of America Securities LLC
9 West 57th Street
New York, New York 10019

Credit Suisse Securities (USA) LLC
Eleven Madison Avenue
New York, New York 10010

Wachovia Capital Markets, LLC
301 South College Street
Charlotte, North Carolina 28288

As Representatives of the several
Underwriters named in Schedule I hereto

Dear Sirs:

Capital One Capital IV (the "Trust"), a statutory trust organized under the Statutory Trust Act (the "Delaware Act") of the State of Delaware (Chapter 38, Title 12, of the Delaware Code, 12 Del. C. §3801 et seq.), a subsidiary of Capital One Financial Corporation, a Delaware corporation (the "Company" and, together with the Trust, the "Offerors"), proposes to issue and sell to the several underwriters named in Schedule I

hereto (the “Underwriters”), for which you are acting as representatives (the “Representatives”), the respective liquidation amount of 6.745% Capital 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 February 5, 2007, among the Company, as sponsor, The Bank of New York, as institutional trustee (the “Institutional Trustee”), The Bank of New York (Delaware), as Delaware trustee (the “Delaware Trustee”), and two individuals who are officers or employees of the Company, as administrative trustees (the “Administrative Trustees” and, together with the Institutional Trustee and the Delaware Trustee, the “Trustees”), and the holders from time to time of undivided beneficial interests in the assets of the Trust. The Securities will be guaranteed by the Company on a junior subordinated basis with respect to distributions and amounts payable upon liquidation or redemption (the “Guarantee”), to the extent described in the Prospectus (as defined below) pursuant to a guarantee agreement, to be dated as of February 5, 2007 (the “Guarantee Agreement”), between the Company and The Bank of New York, as guarantee trustee (the “Guarantee Trustee”).

The Trust will use the proceeds from the sale of the Securities together with the proceeds from the sale of its common securities (the “Common Securities”) to the Company to purchase $500,000,000 aggregate principal amount of 6.745% Capital Efficient Notes due 2082 (the “CENts”) issued by the Company pursuant to the provisions of a subordinated indenture dated as of June 6, 2006 as supplemented by a third supplemental indenture dated February 5, 2007 (as supplemented, the “Indenture”) between the Company and The Bank of New York, as trustee (the “Indenture Trustee”).

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

1. Registration Statement and Prospectus. The Offerors have prepared and filed with the Securities and Exchange Commission (the “Commission”) a registration statement on Form S-3 (File No. 333-133943) under the Securities Act of 1933, as amended (the “Securities Act”) in respect of, among other securities, the Securities, the CENts, and the Guarantee (as amended through the date of this Agreement, being herein referred to as the “Registration Statement”). Such Registration Statement has been declared effective by the Commission. The Registration Statement contains a base prospectus in the form in which it has most recently been filed with the Commission on or prior to the date of this Agreement (the “Base Prospectus”), to be used in connection with the public offering and sale of the Securities. Any preliminary prospectus supplement to the Base Prospectus that describes the Securities and the offering thereof and is used prior to filing of the Prospectus is called, together with the Base Prospectus, a “preliminary prospectus.” The term “Prospectus” shall mean the final prospectus supplement relating to the Securities, together with the Base Prospectus, that is first filed

pursuant to Rule 424(b) under the Securities Act after the date and time that this Agreement is executed and delivered by the parties hereto but shall not include any free writing prospectus (as such term is used in Rule 405 under the Securities Act). Any Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the Securities Act; any reference to any amendment or supplement to any preliminary prospectus or the Prospectus shall be deemed to refer to and include any documents filed after the date of such preliminary prospectus or Prospectus, as the case may be, under the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (collectively, the "Exchange Act"), and incorporated by reference in such preliminary prospectus or Prospectus, as the case may be. The Company and the Trust also have prepared and filed (or will file) with the Commission the Issuer Free Writing Prospectuses (as defined below) set forth on Schedule II hereto. All references in this Agreement to the Registration Statement, a preliminary prospectus, the Prospectus, or any amendments or supplements to any of the foregoing, shall include any copy thereof filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval System ("EDGAR").

2. Agreements to Sell and Purchase. 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 on Schedule I hereto. The purchase price ("Purchase Price") for each Security to be paid by the several Underwriters shall be the initial public offering price per Security of $999.96. As compensation to the Underwriters for their commitments hereunder and in view of the fact that the proceeds of the sale of the Securities will be used to purchase the CENts of the Company, the Company hereby agrees to pay on the Closing Date to the Underwriters a commission of $10.00 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. Delivery to the Underwriters of, and payment for, the Securities shall be made at 10:00 A.M., New York City time, on the 5th business day unless otherwise permitted by the Commission pursuant to Rule 15c6-1 of the Exchange Act (the "Closing Date"), following the date of the initial public offering, at such place as you shall designate. The Closing Date and the location of delivery of and the form of payment for the Securities may be varied by agreement between you and the Company.

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

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

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

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

(c) If, during the Prospectus Delivery Period, any event or development shall occur or condition exist as a result of which the Disclosure Package or Prospectus as then amended and supplemented would include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in light of the 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 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 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, unless it obtains the prior written consent of J.P. Morgan Securities Inc., 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 J.P. Morgan Securities Inc. 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 by any Underwriter of (i) a free writing prospectus that contains no “issuer information” (as defined in Rule 433(h)(2) under the Securities Act) that was not included (including through incorporation by reference) in the Prospectus or a previously filed Issuer Free Writing Prospectus, (ii) any Issuer Free Writing Prospectus listed on Schedule II, or (iii) (x) information describing the preliminary terms of the Securities or their offering or (y) information that describes the final terms of the Securities or their offering and that is included in the Final Term Sheet.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) (i) At the respective times the Registration Statement and any post-effective amendment thereto became or becomes effective prior to the Closing Date, neither the Registration Statement nor such amendment included or will include an untrue statement of a material fact or omitted or will omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) the Registration Statement and the Prospectus comply and, as amended or supplemented, if applicable, as of the date such amendment becomes effective or such supplement is filed with the Commission, as the case may be, will comply in all material respects with the Securities Act and the Trust Indenture Act, (iii) the Prospectus does not contain and, as amended or supplemented, if applicable, as of the date such amendment becomes effective or such supplement is filed with the Commission, as the case may be, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, except that the representations and warranties set forth in this paragraph (b) do not apply to statements or omissions in the Registration Statement or the Prospectus based upon information relating to any Underwriter furnished to the Offerors in writing by such Underwriter expressly for use therein, 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 light of the circumstances under which they were made, not misleading.

(c) The term "Disclosure Package" shall mean (i) the Base Prospectus, including the preliminary prospectus supplement, as amended or supplemented at the Time of Sale (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 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 6:00 p.m. on January 29, 2007.

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

Writing Prospectus based upon and in conformity with written information furnished to the Offerors by any Underwriter through the 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 formed and is validly existing in good standing as a statutory trust under the Delaware Act; is and will be treated as a "grantor trust" for federal income tax purposes under existing law; has the statutory trust power and authority to conduct its business as presently conducted and as described in the 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 have been duly and validly authorized for issuance by the Trust and, when executed in the manner provided for in the Declaration and issued and delivered against payment therefor as provided herein, will be duly and validly issued and (subject to the terms of the Declaration) fully paid and non-assessable undivided beneficial interests in the assets of the Trust, not subject to any preemptive or other similar rights, and will conform as to legal matters in all material respects to the descriptions thereof contained in the Disclosure Package and the Prospectus; holders of the Securities will be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware.

(j) The Common Securities have been duly authorized for issuance by the Declaration and, when issued and delivered by the Trust to the Company against payment therefor as described in the Registration Statement, the Disclosure Package and the Prospectus, will be validly issued and (subject to the terms of the Declaration) fully paid and undivided beneficial interests in the assets of the Trust and will conform as to legal matters in all material respects to the descriptions thereof in the Registration Statement, the Disclosure Package and the Prospectus; the issuance of the Common Securities is not

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

(m) The Company and each of its Significant Subsidiaries and the Trust are in compliance in all material respects with all laws administered by and regulations of the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Virginia State Corporation Commission and any other federal or state bank regulatory authority with jurisdiction over the Company or any of its subsidiaries (the "Bank Regulatory Authorities"), other than where such failures to comply would not have a material adverse effect on the Company and its subsidiaries, taken as a whole. Except in each case as set forth in the Disclosure Package and the Prospectus, neither the Company nor any of its subsidiaries is a party to any written agreement or memorandum of understanding with, or a party to any commitment letter or similar undertaking to, or is subject to any order or directive by, or is a recipient of any extraordinary supervisory letter from, or has adopted any board resolutions at the request of, any Bank Regulatory Authority which restricts materially the conduct of its business, or 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 or an affiliate and has been duly authorized by the Company to execute and deliver the Declaration.

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

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

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

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

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

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

(d) The Company has not received from the Commission any notice pursuant to Rule 401(g) objecting to the use of the automatic shelf registration statement form. If at any time during the Prospectus Delivery Period the Company receives from the Commission a notice pursuant to Rule 401(g)(2) or otherwise ceases to be eligible to use the automatic shelf registration statement form, the Company will (i) promptly notify the 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 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) without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r).

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

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

(h) The CENts have been duly authorized by the Company and, when validly issued, executed and delivered by the Company and authenticated in accordance with the provisions of the Indenture, will be entitled to the benefits of the Indenture, and will be

valid and binding obligations of the Company, enforceable in accordance with their terms except as limited by (i) bankruptcy, insolvency or similar laws affecting creditors' rights generally and (ii) equitable principles of general applicability.

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

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

(k) The CENts are subordinated and junior in right of payment to all Senior Indebtedness of the Company.

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

(m) The financial statements, together with related schedules and notes forming part of the Registration Statement, 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 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 financial statements and the books and records of the Company.

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

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

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

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

(a) The execution, delivery and performance of this Agreement, the issuance and sale of the Securities and the Common Securities, and the consummation of the transactions contemplated herein and therein and compliance by the Trust with its obligations hereunder and thereunder have been duly authorized by all necessary action (trust or otherwise) on the part of the Trust and do not and will not result in any violation of the Declaration or the Certificate of Trust for the Trust, dated as of June 2, 2005 (the “Certificate of Trust”), and do not and will not conflict with, or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of, any lien, charge or encumbrance upon any property or assets of the Trust under (A) any contract, indenture, mortgage, loan agreement, note, lease or other

agreement or instrument to which the Trust is a party or by which it may be bound or to which any of its properties may be subject or (B) any existing applicable law, rule, regulation, judgment, order or decree of any government, governmental instrumentality or court, domestic or foreign, or any regulatory body or administrative agency or other governmental body having jurisdiction over the Trust or any of its properties (except for conflicts, breaches, violations or defaults which would not, individually or in the aggregate, be materially adverse to the Trust, or materially adverse to the transactions contemplated by this Agreement).

7. Representations and Warranties of the Underwriters. Each Underwriter hereby represents and agrees that:

(a) 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.

(b) In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (as defined below) (each, a "Relevant Member State"), with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the "Relevant Implementation Date") it has not made and will not make an offer of the Securities to the public in that Relevant Member State prior to the publication of a prospectus in relation to the Securities which has been approved by the competent authority in that Relevant Member State or, where appropriate, approved in another Relevant Member State and notified to the competent authority in that Relevant Member State, all in accordance with the Prospectus Directive, except that it may, with effect from and including the Relevant Implementation Date, make an offer of the Securities to the public in that Relevant Member State at any time to (i) legal entities which are authorized or regulated to operate in the financial markets or, if not so authorized or regulated, whose corporate purpose is solely to invest in securities; (ii) to any legal entity which has two or more of (1) an average of at least 250 employees during the last financial year, (2) a total balance sheet of more than €43,000,000 and (3) an annual net turnover of more than €50,000,000 as shown in its last annual or consolidated accounts; or (iii) in any other circumstances which do not require the publication by the Trust of a prospectus pursuant to Article 3 of the Prospectus Directive. For the purposes of this paragraph, the expression an "offer of the Securities to the public" in relation to any Securities in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the Securities to be offered so as to enable an investor to decide to purchase or subscribe the Securities, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State and the expression "Prospectus Directive" means Directive 2003/71/EC and includes any relevant implementing measure in each Relevant Member State.

8. Indemnification. (a) The Offerors jointly and severally agree to indemnify and hold harmless each Underwriter and each person, if any, who controls any

Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any and all losses, claims, damages, liabilities and judgments arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, the Prospectus, the Disclosure Package or any Issuer Free Writing Prospectus (each as amended or supplemented if the Company or the Trust shall have furnished any amendments or supplements thereto) or any preliminary prospectus, or arising out of or based upon any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such losses, claims, damages, liabilities or judgments are caused by any such untrue statement or omission or alleged untrue statement or omission based upon information relating to any Underwriters furnished in writing to the Company or the Trust by or on behalf of any Underwriter through you expressly for use therein *provided, however,* that the foregoing indemnity agreement with respect to the preliminary prospectus shall not inure to the benefit of any Underwriter from whom the person asserting any such losses, claims, damages or liabilities purchased Securities, or any person controlling such Underwriter where it shall have been determined by a court of competent jurisdiction by final and nonappealable judgment that (i) prior to the Time of Sale the Company shall have notified such Underwriter that the preliminary prospectus contains an untrue statement of material fact or omits to state therein a material fact required to be stated therein in order to make the statements therein not misleading, (ii) such untrue statement or omission of a material fact was corrected in an amended or supplemented preliminary prospectus or, where permitted by law, an Issuer Free Writing Prospectus (as defined in Rule 433 under the Act) and such corrected preliminary prospectus or Issuer Free Writing Prospectus was provided to such Underwriter far enough in advance of the Time of Sale so that such corrected preliminary prospectus or Issuer Free Writing Prospectus could have been provided to such person prior to the Time of Sale, (iii) such corrected preliminary prospectus or Issuer Free Writing Prospectus (excluding any document then incorporated or deemed incorporated therein by reference) was not conveyed to such person at or prior to the Time of Sale, and (iv) such loss, claim, damage or liability would not have occurred had the corrected preliminary prospectus or Issuer Free Writing Prospectus (excluding any document then incorporated or deemed incorporated therein by reference) been conveyed to such person as provided for in clause (iii) above.

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

parties to any such action (including any impleaded parties) include both such Underwriter or such controlling person and the Company or Trust and such Underwriter or such controlling person shall have been advised by such counsel that there may be one or more legal defenses available to it which are different from or additional to those available to the Company or the Trust (in which case the Company or Trust shall not have the right to assume the defense of such action on behalf of such Underwriter or such controlling person, it being understood, however, that the Company or Trust shall not, in connection with any one such action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, be liable for the reasonable fees and expenses of more than one separate firm of attorneys (in addition to any local counsel) for all such Underwriters and controlling persons, which firm shall be designated in writing by J.P. Morgan Securities Inc., and that all such reasonable fees and expenses shall be reimbursed as they are incurred). Neither the Company nor the Trust shall be liable for any settlement of any such action effected without its written consent but if settled with the written consent of the Company or the Trust, as applicable, the Company and Trust agree to indemnify and hold harmless any Underwriter and any such controlling person from and against any loss or liability by reason of such settlement. Notwithstanding the immediately preceding sentence, if in any case where the reasonable fees and expenses of counsel are at the expense of the indemnifying party and an indemnified party shall have requested the indemnifying party to reimburse the indemnified party for such fees and expenses of counsel as incurred, such indemnifying party agrees that it shall be liable for any settlement of any action effected without its written consent if (i) such settlement is entered into more than ten business days after the receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall have failed to reimburse the indemnified party in accordance with such request for reimbursement (except to the extent there is a good faith dispute as to the reasonableness of the legal fees and legal expenses of counsel retained by such indemnified party prior to the date of such settlement). No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding.

(c) Each Underwriter agrees, severally and not jointly, to indemnify and hold harmless the Company, the Trust, the Trustees, each of their respective directors, officers and trustees who signs the Registration Statement and each person controlling either of them within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, to the same extent as the foregoing indemnity from the Company and the Trust to each Underwriter but only to the extent of losses, claims, damages, liabilities and judgments arising out of or based upon information relating to such Underwriter furnished in writing by or on behalf of such Underwriter expressly for use in the Registration Statement, the Base Prospectus, the Disclosure Package or the Prospectus. You confirm that the Underwriters' names in the table in the first paragraph and the statements set forth in the third, sixth, seventh and eighth paragraphs under the heading "Underwriting" in the preliminary prospectus supplement and the prospectus supplement

were furnished in writing to the Company and the Trust by or on behalf of the Underwriters expressly for use therein. In case any action shall be brought against any of the indemnified parties under this Section based on the Registration Statement, the Base Prospectus, any preliminary prospectus or the Prospectus and in respect of which indemnity may be sought against any Underwriter, the Underwriter shall have the rights and duties given to the Company and the Trust (except that if the Company or the Trust shall have assumed the defense thereof, such Underwriter shall not be required to do so, but may employ separate counsel therein and participate in the defense thereof but the fees and expenses of such counsel shall be at the expense of such Underwriter), and the indemnified parties hereunder shall have the rights and duties given to the Underwriter, by Section 8(b) hereof.

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

The Company, the Trust and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 8(d) were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding paragraph. The amount paid or payable by an indemnified party as a result of the losses, claims, damages, liabilities or judgments referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 8, no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at

which the Securities underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages which such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations to contribute pursuant to this Section 8(d) are several in proportion to the respective amount of Securities purchased by each of the Underwriters hereunder and not joint.

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

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

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

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

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

(d) At the Closing Date, at least one "nationally recognized statistical rating organization" (as defined for purposes of Rule 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 dated the Closing Date, signed by the Chief Financial Officer and the Treasurer of the Company, and a certificate dated the Closing Date, signed by the Administrative Trustees confirming the matters set forth in paragraphs (a), (b), (c), (d) and (e) (i) – (iii) of this Section 9.

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

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

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

(i) You shall have received on the Closing Date an opinion, dated the Closing Date, of Sullivan & Cromwell LLP, special structuring counsel to the Underwriters and special tax counsel to the Company, in form and substance satisfactory to the Representatives and their counsel (other than Sullivan & Cromwell LLP).

(j) You shall have received on the Closing Date an opinion, dated the Closing Date, of Richards Layton & Finger, P.A., special Delaware counsel to the Company and the Trust relating to The Bank of New York (Delaware), in form and substance satisfactory to the Representatives and their counsel.

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

(l) 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.

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

(n) 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.

(o) 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, 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 on the New York Stock Exchange, the American Stock Exchange or the NASDAQ National Market System, limitation on prices on any such exchange or National Market System, (iv) a material disruption in securities settlement that makes it impracticable to deliver the Securities in the manner contemplated by the Prospectus, or (v) the taking of any action by any federal, state or local government or agency in respect of its monetary or fiscal affairs which in the opinion of the 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 IV, 1680 Capital One Drive, McLean, Virginia 22102, Attention: Director of Capital Markets, (b) if to the Company, to Capital One Financial Corporation, 1680 Capital One Drive, McLean, Virginia 22102, Attention: Director of Capital Markets, and (c) if to any Underwriter, to you c/o 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 because of any failure or refusal on the part of the Offerors to comply with the terms or to fulfill any of the conditions of this Agreement, the Company agrees to reimburse the several Underwriters for all out-of-pocket expenses (including the fees and disbursements of counsel) reasonably incurred by them.

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

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

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

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

Very truly yours,

CAPITAL ONE CAPITAL IV

By: /s/ Frank R. Borchert III
Name: Frank R. Borchert III
Title: Administrative Trustee

CAPITAL ONE FINANCIAL CORPORATION

By: /s/ Stephen Linehan
Name: Stephen Linehan
Title: Executive Vice President & Treasurer

Accepted:

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

BY: J.P. MORGAN SECURITIES INC.

By: /s/ José C. Padilla
Name: José C. Padilla
Title: Vice President

By: BANC OF AMERICA SECURITIES LLC

By: /s/ Lily Chang
Name: Lily Chang
Title: Principal

By: CREDIT SUISSE SECURITIES (USA) LLC

By: /s/ Sharon Harrison
Name: Sharon Harrison
Title: Director

By: WACHOVIA CAPITAL MARKETS, LLC

By: /s/ Jeremy Schwartz
Name: Jeremy Schwartz
Title: Vice President

SCHEDULE I

Underwriters		Liquidation Amount of Securities to be Purchased
J.P. Morgan Securities Inc.	$	112,500,000
Banc of America Securities LLC	$	112,500,000
Credit Suisse Securities (USA) LLC	$	112,500,000
Wachovia Capital Markets, LLC	$	112,500,000
Barclays Capital Inc.	$	10,000,000
Citigroup Global Markets Inc.	$	10,000,000
Deutsche Bank Securities Inc.	$	10,000,000
Greenwich Capital Markets, LLC	$	10,000,000
Sandler, O'Neill & Partners, L.P.	$	10,000,000
TOTAL	**$**	**500,000,000**

SCHEDULE II

Final Term Sheet

Exhibit 4.2

Execution Version

CAPITAL ONE FINANCIAL CORPORATION

AND

THE BANK OF NEW YORK
as Trustee

THIRD SUPPLEMENTAL INDENTURE

Dated as of February 5, 2007

to the

INDENTURE

Dated as of June 6, 2006

THIRD SUPPLEMENTAL INDENTURE, dated as of February 5, 2007 (the "Supplemental Indenture"), between CAPITAL ONE FINANCIAL CORPORATION, a Delaware corporation (the "Company") having its principal office at 1680 Capital One Drive, McLean, VA 22102, and THE BANK OF NEW YORK, a New York banking corporation, as Trustee (the "Trustee").

WITNESSETH:

WHEREAS, the Company and the Trustee have heretofore executed and delivered a certain Indenture, dated as of June 6, 2006, between the Company and the Trustee (the "Indenture"), providing for the issuance from time to time of Securities;

WHEREAS, Section 9.1 of the Indenture provides that a supplemental indenture may be entered into by the Company and the Trustee without the consent of any Holder of any Securities to establish the form or terms of Securities of any series as permitted by Section 2.1 or 3.1 of the Indenture;

WHEREAS, pursuant to Sections 2.1 and 3.1 of the Indenture, the Company desires to provide for the establishment of a new series of Securities under the Indenture, the form and substance of such Securities and the terms, provisions and conditions thereof to be set forth as provided in the Indenture and this Supplemental Indenture;

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

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

NOW, THEREFORE, in consideration of the premises and the purchase of the Securities of the series established by this Supplemental Indenture 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

1.1 For all purposes of this Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires, (i) references to any Article, Section or subdivision thereof are references to an Article, Section or other subdivision of this Supplemental Indenture and (ii) capitalized terms not otherwise defined herein shall have the meanings set forth in the Indenture and the following terms used in this Supplemental Indenture have the following respective meanings:

"APM Commencement Date" means, with respect to any Deferral Period, the earlier of (i) the first Interest Payment Date following the commencement of such Deferral Period on which the Company pays any current interest on the CENts and (ii) the fifth anniversary of the commencement of such Deferral Period.

"APM Period" means, with respect to any Deferral Period, the period commencing on the APM Commencement Date and ending on the next Interest Payment Date on which the Company has raised an amount of Eligible Proceeds at least equal to the aggregate amount of accrued and unpaid deferred interest, including Compounded Interest, on the CENts.

"Applicable Percentage" has the meaning set forth in the Replacement Capital Covenant.

"Bankruptcy Event" means any of the events set forth in Section 5.1(b), (c) or (d) of the Indenture.

"Business Day" is any day, other than (i) a Saturday, Sunday or other day on which banking institutions in The City of New York are authorized or required by law or executive order to remain closed or (ii) on or after February 17, 2032, a day that is not a day on which dealings in deposits in U.S. dollars are transacted in the London interbank market.

"Calculation Agent" means JPMorgan Chase Bank, National Association, or any other firm appointed by the Company, acting as calculation agent for the CENts.

"Capital Securities" has the meaning set forth in the Declaration of Trust.

"Capital Treatment Event" means the reasonable determination by the Company that, as a result of any (i) 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 Capital Securities, (ii) proposed change in those laws or regulations that is announced after the initial issuance of the Capital Securities, or (iii) 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 Capital Securities, there is more than an insubstantial risk of impairment of the Company's ability to treat the Capital Securities (or any substantial portion) as "Tier 1 Capital" (or the equivalent thereof) for purposes of the capital adequacy guidelines of the Federal Reserve, as then in effect and applicable to the Company.

"CENts" has the meaning set forth in Section 2.1(a).

"Common Stock" means the common stock, par value $0.01 per share, of the Company.

"Compounded Interest" means the interest, if any, that shall accrue on any interest on the CENts the payment of which has not been made on the applicable Interest Payment Date and which shall accrue at the rate per annum specified or determined as specified in the CENts.

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

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

"Deferral Period" means each period beginning on an Interest Payment Date with respect to which the Company elects pursuant to Section 2.1(g) to defer all or part of any interest payment and ending on the earlier of (i) the tenth anniversary of such Interest Payment Date and (ii) the next Interest Payment Date on which the Company has paid the deferred amount, all deferred amounts with respect to any subsequent period and all other accrued interest on the CENts.

"Eligible Proceeds" means, with respect to any Interest Payment Date, the net proceeds (after underwriters' or placement agents' fees, commissions or discounts and other expenses relating to the issuance or sale) the Company has received during the six-month period, or monthly period, as applicable, prior to such Interest Payment Date from the issuance or sale of Qualifying Warrants up to the Share Cap or Qualifying Non-Cumulative Preferred Stock up to the Preferred Stock Issuance Cap to Persons that are not Subsidiaries.

"Existing Parity Obligations" means (i) the Company's 7.50% junior subordinated debt securities due June 15, 2066 issued in connection with the June 2006 offering of 7.50% capital securities of Capital One Capital II and the Company's guarantee of these capital securities; and (ii) the 7.686% junior subordinated debt securities due August 1, 2066 issued in connection with the August 2006 offering of 7.686% capital securities of Capital One Capital III and the Company's guarantee of these capital securities.

"Federal Reserve" means the Board of Governors of the Federal Reserve System, as from time to time constituted or, if at any time after the execution of this Indenture the Federal Reserve is not existing and performing the duties now assigned to it, the body performing such duties at such time.

"Final Repayment Date" has the meaning set forth in Section 2.1(d)(iii).

"Guarantee" has the meaning set forth in Section 2.1(a).

"Intent-Based Replacement Disclosure" has the meaning set forth in the Replacement Capital Covenant.

“Interest Payment Date” means a Monthly Interest Payment Date or a Semi-Annual Interest Payment Date, as the case may be.

“Interest Period” means the period from and including any Interest Payment Date (or, in the case of the first Interest Payment Date, February 5, 2007) to but excluding the next Interest Payment Date.

“Investment Company Event” means the receipt by the Company and the Trust of an opinion of counsel experienced in matters relating to investment companies to the effect that, as a result of any change in law or regulation or change in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority, there is more than an insubstantial risk that the Trust is or will be considered an investment company that is required to be registered under the Investment Company Act of 1940, which change becomes effective on or after the original issuance of the Capital Securities.

“Make-Whole Redemption Price” means the sum of the present values of the remaining scheduled payments of principal discounted from February 17, 2032 and interest thereon that would have been payable to and including February 17, 2032 (not including any portion of such payments of interest accrued as of the Redemption Date), discounted from February 17, 2032 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 (i) 0.375% in the case of a redemption pursuant to Section 2.1(l)(ii) or 0.500% in the case of a redemption pursuant to Section 2.1(l)(i) or (iii).

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

(a) trading in securities generally on the New York Stock Exchange or any other national securities exchange or over-the-counter market on which the Common Stock and/or Qualifying Non-Cumulative Preferred Stock is then listed or traded shall have been suspended or its settlement generally shall have been materially disrupted;

(b) the Company would be required to obtain the consent or approval of its shareholders or a regulatory body (including, without limitation, any securities exchange) or governmental authority to issue Qualifying Warrants or Qualifying Non-Cumulative Preferred Stock pursuant to Section 2.1(i) or to issue Qualifying Capital Securities pursuant to Section 2.1(d), as the case may be, and the Company fails to obtain such consent or approval notwithstanding its commercially reasonable efforts to obtain such consent or approval (including, without limitation, failing to obtain approval for such issuance if required from the Federal Reserve after having given notice to the Federal Reserve as required under Section 2.1(i));

(c) an event occurs and is continuing as a result of which the offering document for the offer and sale of Qualifying Warrants or Qualifying Non-Cumulative Preferred Stock or Qualifying Capital Securities, as the case may be, would, in the Company’s reasonable judgment, contain an untrue statement of a material fact or omit to state a material fact required to be stated in such offering document or necessary to make the statements in such offering

document not misleading and either (i) the disclosure of such event, in the Company's reasonable judgment, would have a material adverse effect on its business or (ii) the disclosure relates to a previously undisclosed development or proposed or pending material business transaction, and the Company has a *bona fide* business need for keeping the same confidential or the disclosure of which would impede the Company's ability to consummate such transaction; *provided* that one or more events described in this clause (c) shall not constitute a Market Disruption Event (A) with respect to more than 90 days in any 180-day period within any APM Period with respect to the Company's obligations pursuant to Section 2.1(i) or (B) with respect to more than six Monthly Interest Payment Dates (whether or not consecutive) in connection with the Company's obligations pursuant to Section 2.1(d);

(d) a material disruption or banking moratorium occurs or has been declared in commercial banking or securities settlement or clearance services in the United States; or

(e) the Company reasonably believes that the offering document for the offer and the sale of Common Stock or Qualifying Non-Cumulative Preferred Stock or Qualifying Capital Securities, as the case may be, would not be in compliance with a rule or regulation of the Commission (for reasons other than those referred to in clause (b) or (c) above) and the Company is unable to comply with such rule or regulation or such compliance is impracticable; *provided* that one or more events described in this clause (e) shall not constitute a Market Disruption Event (A) with respect to more than 90 days in any 180-day period (or after the Scheduled Maturity Date, six consecutive Monthly Interest Payment Dates) in any APM Period with respect to the Company's obligations pursuant to Section 2.1(i) or (B) with respect to more than six Monthly Interest Payment Dates (whether or not consecutive) in connection with the Company's obligations pursuant to Section 2.1(d).

"Monthly Interest Payment Date" has the meaning set forth in Section 2.1(e).

"One-month LIBOR" means, with respect to any Interest Period beginning on or after February 17, 2032, the rate (expressed as a percentage per annum) for deposits in U.S. dollars for a one-month period commencing on the first day of that monthly interest period that appears on Telerate Page 3750 as of 11:00 a.m. (London time) on the LIBOR determination date for that Interest Period. If such rate does not appear on Moneyline Telerate Page 3750, one-month LIBOR will be determined on the basis of the rates at which deposits in U.S. dollars for a one-month period commencing on the first day of that Interest Period and in a principal amount of not less than $1,000,000 are offered to prime banks in the London interbank market by four major banks in the London interbank market selected by the Calculation Agent (after consultation with the Company), at approximately 11:00 a.m., London time on the LIBOR determination date for that Interest Period. The Calculation Agent will request the principal London office of each of such banks to provide a quotation of its rate. If at least two such quotations are provided, one-month LIBOR with respect to that Interest Period will be the arithmetic mean (rounded upward if necessary to the nearest whole multiple of 0.00001%) of such quotations. If fewer than two quotations are provided, one-month LIBOR with respect to that Interest Period will be the arithmetic mean (rounded upward if necessary to the nearest whole multiple of 0.00001%) of the rates quoted by three major banks in New York City selected by the Calculation Agent, at approximately 11:00 a.m., New York City time, on the first day of that Interest Period for loans in U.S. dollars to leading European banks for a one-month

period commencing on the first day of that Interest Period and in a principal amount of not less than $1,000,000. However, if fewer than three banks selected by the Calculation Agent to provide quotations are quoting as described above, one-month LIBOR for that Interest Period will be the same as one-month LIBOR as determined for the previous Interest Period or, in the case of the Interest Period commencing on February 17, 2032, 5.32%. The establishment of one-month LIBOR for each Interest Period commencing on or after the Scheduled Maturity Date by the Calculation Agent shall (in the absence of manifest error) be final and binding. For purposes of this definition , "London banking day" means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London, England; "LIBOR determination date" means the second London banking day immediately preceding the first day of the relevant Interest Period; "MoneyLine Telerate Page" means the display on Moneyline Telerate, Inc., or any successor service, on Telerate Page 3750 or any replacement page or pages on that service; and "Telerate Page 3750"' means the display designated on page 3750 on MoneyLine Telerate Page (or such other page as may replace the 3750 page on the service or such other service as may be nominated by the British Bankers' Association for the purpose of displaying London interbank offered rates for U.S. dollar deposits).

"Other Replacement Capital Covenant" has the meaning set forth in the Replacement Capital Covenant.

"Parity Securities" means the Existing Parity Obligations and debt securities issued by the Company after the date hereof that have the same rank upon liquidation of the Company as the CENts.

"Preferred Stock Issuance Cap" has the meaning set forth in Section 2.1(i)(1).

"Qualifying Capital Securities" has the meaning set forth in the Replacement Capital Covenant.

"Qualifying Non-Cumulative Preferred Stock" means non-cumulative perpetual preferred stock of the Company that (i) ranks *pari passu* with or junior to all of our other outstanding preferred stock and (ii) contains no remedies other than Permitted Remedies and either is (a) subject to Intent-Based Replacement Disclosure and has a provision that prohibits the Company from making any Distributions thereon upon the Company's failure to satisfy one or more financial tests set forth therein or (b) is subject to a replacement capital covenant substantially similar to the Replacement Capital Covenant or an Other Qualifying Replacement Capital Covenant.

"Qualifying Warrants" means net share settled warrants to purchase Common Stock that (i) have an exercise price per share greater than the Current Stock Market Price as of the date of issuance thereof and (ii) the Company is not entitled to redeem for cash and the holders of which are not entitled to require the Company to repurchase for cash in any circumstances.

"Rating Agency Event" means a change in the methodology employed by any nationally recognized statistical rating organization within the meaning of Rule 15c3-1 under the Exchange Act that, as of January 29, 2007, publishes a rating for the Company (a "Rating Agency") in assigning equity credit to securities such as the CENts, as such methodology is in effect as of

January 29, 2007 (the "Current Criteria"), which change results in a lower equity credit being assigned by such Rating Agency to the CENts as of the date of such change than the equity credit that would have been assigned to the CENts as of the date of such change by such Rating Agency pursuant to its Current Criteria.

"Repayment Date" means the Scheduled Maturity Date and each Monthly Interest Payment Date thereafter until the Company shall have repaid or redeemed, all of the CENts.

"Replacement Capital Covenant" means the Replacement Capital Covenant, dated as of February 5, 2007, of the Company, as the same may be amended or supplemented from time to time in accordance with Section 2.1(m) and the provisions thereof.

"Scheduled Maturity Date" has the meaning set forth in Section 2.1(d).

"Semi-Annual Interest Payment Date" has the meaning set forth in Section 2.1(e).

"Share Cap" has the meaning set forth in Section 2.1(i)(2).

"Tax Event" has the meaning set forth in the Declaration of Trust.

"Treasury Dealer" means The Bank of New York (or its successor) or, if The Bank of New York (or its successor) refuses to act as Treasury Dealer for the purpose of determining the Make-Whole Redemption Price or ceases to be a primary U.S. Government securities dealer, another nationally recognized investment banking firm that is a primary U.S. Government securities dealer specified by the Company for these purposes.

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

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

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

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

“Warrant Issuance Cap” has the meaning set forth in Section 2.1(i)(1).

ARTICLE II

TERMS OF SERIES OF SECURITIES

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 “6.745% Capital Efficient Notes due 2082” of the Company (the “CENts”). The CENts initially shall be issued to Capital One Capital IV, 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 February 5, 2007 (the “Declaration of Trust”), among the Company, as Sponsor, The Bank of New York (Delaware), as Delaware Trustee, The Bank of New York, as Institutional Trustee (the “Institutional Trustee”), and certain employees of the Company as Administrative Trustees (the “Administrative Trustees”). The guarantee with respect to the Capital Securities will be issued pursuant to the Guarantee Agreement, dated as of February 5, 2007 (the “Guarantee”), between the Company and The Bank of New York, as Guarantee Trustee.

(b) Aggregate Principal Amount. The maximum aggregate principal amount of the CENts which may be authenticated and delivered under the Indenture and this Supplemental Indenture is $600,010,000 (except for CENts authenticated and delivered upon registration of transfer of, or exchange for, or in lieu of, other CENts pursuant to Section 3.4, 3.5, 3.6, 9.6 or 11.7 of the Indenture).

(c) Denominations. The CENts will be issued only in fully registered form, and the authorized denominations of the CENts shall be $1,000 principal amount and any integral multiple thereof.

(d) Scheduled Maturity Date. (i) The principal amount of, and all accrued and unpaid interest on, the CENts shall be payable in full on February 17, 2037, or if such day is not a Business Day, the following Business Day (the “Scheduled Maturity Date”); *provided* that in the event the Company has delivered an Officers’ Certificate to the Trustee pursuant to clause (vii) of this Section 2.1(d) in connection with the Scheduled Maturity Date, (A) the principal amount of CENts payable on the Scheduled Maturity Date, if any, shall be the principal amount set forth in the notice of repayment accompanying such Officers’ Certificate, (B) such principal amount of CENts shall be repaid on the Scheduled Maturity Date pursuant to Article III, and (C) subject to clause (ii) of this Section 2.1(d), the remaining CENts shall remain outstanding and shall be payable on the immediately succeeding Monthly Interest Payment Date or such earlier date on which they are redeemed pursuant to Section 2.1(l) or shall become due and payable pursuant to Section 5.2 of the Indenture (as amended and restated by this Supplemental Indenture). The entire principal amount of the CENts outstanding shall be due and payable on the Scheduled Maturity Date in the event the Company does not deliver an Officers’ Certificate to the Trustee on or prior to the 10th Business Day immediately preceding the Scheduled Maturity Date.

(ii) In the event the Company has delivered an Officers' Certificate to the Trustee pursuant to clause (vii) of this Section 2.1(d) in connection with any Monthly Interest Payment Date, the principal amount of CENts payable on such Monthly Interest Payment Date shall be the principal amount set forth in the notice of repayment, if any, accompanying such Officers' Certificate, such CENts shall be repaid on such Monthly Interest Payment Date pursuant to Article III, and the remaining CENts shall remain outstanding and shall be payable on the immediately succeeding Monthly Interest Payment Date or such earlier date on which they are redeemed pursuant to Section 2.1(l) or shall become due and payable pursuant to Section 5.2 of the Indenture (as amended and restated by this Supplemental Indenture). The entire principal amount of the CENts outstanding shall be due and payable on any Monthly Interest Payment Date in the event the Company does not deliver an Officers' Certificate to the Trustee pursuant to clause (vii) of this Section 2.1(d) on or prior to the 10th Business Day immediately preceding such Monthly Interest Payment Date.

(iii) The principal of, and all accrued and unpaid interest on, all outstanding CENts shall be due and payable on February 5, 2082, or if such day is not a Business Day, the following Business Day (the "Final Repayment Date").

(iv) The obligation of the Company to repay the CENts pursuant to this Section 2.1(d) on any date prior to the Final Repayment Date shall be subject to (A) its obligations under Section 14.2 of the Indenture to the holders of Senior Indebtedness and (B) its obligations under Section 2.1(h) with respect to the payment of deferred interest on the CENts.

(v) Until the CENts are paid in full, the Replacement Capital Covenant is no longer in effect, or the CENts become due and payable pursuant to Section 5.2 of the Indenture, the Company shall use "commercially reasonable efforts" (as defined in clause (vi) below), subject to a Market Disruption Event:

> (A) to sell sufficient Qualifying Capital Securities during a six-month period ending on the date, not more than 15 and not less than 10 Business Days prior to the Scheduled Maturity Date, on which the Company delivers the notice required by Section 3.1 to permit repayment of the CENts in full on the Scheduled Maturity Date, and
>
> (B) if the Company is unable for any reason to sell sufficient Qualifying Capital Securities to permit payment in full on the Scheduled Maturity Date or any subsequent Monthly Interest Payment Date, during a 30-day period ending on the date, not more than 15 and not less than 10 Business Days prior to each Monthly Interest Payment Date, on which the Company delivers the notice required by Section 3.1, to sell sufficient Qualifying Capital Securities to permit repayment of the CENts in full on such date pursuant to clause (ii) of this Section 2.1(d); and

the Company shall repay a principal amount of the CENts equal to the net proceeds of the sale of such Qualifying Capital Securities, as provided in clause (viii) of this Section 2.1(d).

(vi) For purposes of this Section 2.1(d), "commercially reasonable efforts" to sell Qualifying Capital Securities means commercially reasonable efforts to complete the offer and sale of Qualifying Capital Securities to Persons other than Subsidiaries in public offerings or private placements. The Company shall not be considered to have made commercially reasonable efforts to effect a sale of Qualifying Capital Securities if it determines not to pursue or complete such sale due to pricing, coupon, dividend rate or dilution considerations.

(vii) The Company shall, if it has not sold sufficient Qualifying Capital Securities to repay the outstanding principal amount of the CENts on any Repayment Date, deliver an Officers' Certificate to the Trustee (which the Trustee will promptly forward upon receipt to the Administrative Trustees, who shall forward such certificate to each holder of record of Capital Securities) no more than 15 and no less than 10 Business Days in advance of such Repayment Date stating the amount of such net proceeds, if any, raised pursuant to clause (v) above in connection with such Repayment Date. The Company shall be excused from its obligation to use commercially reasonable efforts to sell Qualifying Capital Securities pursuant to clause (v) above if such Officers' Certificate further certifies that: (A) a Market Disruption Event was existing during the six-month period preceding the date on which such Officers' Certificate is delivered to the Trustee, or, in the case of any Repayment Date after the Scheduled Maturity Date, the monthly period preceding the date of such Officers' Certificate; and (B) either (1) the Market Disruption Event continued for the entire six month period or monthly period, as the case may be, or (2) the Market Disruption Event continued for only part of the relevant period, but the Company was unable after commercially reasonable efforts to sell sufficient Qualifying Capital Securities during the rest of that period to permit repayment of the CENts in full. Each Officers' Certificate delivered pursuant to this clause (vii), unless no principal amount of CENts is to be repaid on the applicable Repayment Date, shall be accompanied by a notice of repayment pursuant to Section 3.1 setting forth the principal amount of the CENts to be repaid on such Repayment Date, which amount shall be determined after giving effect to clause (viii) of this Section 2.1(d).

(viii) Payments on the CENts on any Repayment Date will be applied, first, to deferred interest to the extent of Eligible Proceeds raised pursuant to Section 2.1(i), second, to current interest to the extent not paid from other sources, and third, to the principal of the CENts; *provided* that if the Company is obligated to sell Qualifying Capital Securities and repay principal of or interest on any outstanding Parity Securities in addition to the CENts, then on any date and for any period the amount of net proceeds received by the Company from those sales and available for such payments shall be applied first to Parity Securities having an earlier scheduled maturity date than the CENts and then to the CENts and those other Parity Securities having the same scheduled maturity date as the CENts *pro rata* in accordance with their respective outstanding principal amounts and none of such net proceeds shall be applied to any other Parity Securities having a later scheduled maturity date until the principal of and all accrued and unpaid interest on the CENts has been paid in full. Notwithstanding the foregoing, if the net proceeds of sales of Qualifying Capital Securities during the relevant six-month or monthly period is less than $5,000,000, the Company will not be required to repay any CENts on the relevant Repayment Date, but shall repay the CENts as provided in this clause (viii) on the next Repayment Date as of which the Company has received at least $5,000,000 of net proceeds from the sale of Qualifying Capital Securities.

(e) Rate of Interest. Section 3.10(a) of the Indenture shall not apply to the CENts. Solely for purposes of the CENts, Section 3.10(b) of the Indenture shall allow for computation of interest on the basis of either a 360-day year comprised of twelve 30-day months or a 360-day year and the actual number of days elapsed, as specified in the CENts. The CENts shall bear interest (i) from and including February 5, 2007 to but excluding February 17, 2032, at the rate of 6.745% per annum, (ii) thereafter, to and excluding the Scheduled Maturity Date, at an annual rate equal to One-month LIBOR plus 1.17%, and (iii) thereafter, at an annual rate equal to One-month LIBOR plus 2.17%. Subject to Sections 2.1(g) and (h), interest on the CENts shall be payable (i) semi-annually in arrears on February 17 and August 17 of each year, commencing on August 17, 2007, until February 17, 2032 (each such date, a "Semi-Annual Interest Payment Date") and (ii) thereafter, on the 17th day of each month. In the event any Interest Payment Date on or before February 17, 2032 is not a Business Day, that Interest Payment Date shall be postponed to the following Business Day and no interest will accrue as a result of such postponement. In the event that any Interest Payment Date after February 17, 2032 would otherwise fall on a day that is not a Business Day, that Interest Payment Date will be postponed to the next day that is a Business Day; *provided* that if the postponement would cause the day to fall in the next calendar month, the Interest Payment Date will instead be brought forward to the immediately preceding Business Day (each such date, a "Monthly Interest Payment Date"), in arrears, commencing on March 17, 2032. Any installment of interest (or portion thereof) deferred in accordance with Section 2.1(g) or otherwise unpaid shall bear interest, to the extent permitted by law, at the rate of interest then in effect on the CENts, from the relevant Interest Payment Date, compounded on each subsequent Interest Payment Date, until paid or cancelled in accordance with Section 2.1(h). From and including February 5, 2007 to but excluding February 17, 2032, the amount of interest payable on this Security shall be computed on the basis of a 360-day year comprised of twelve 30-day months; thereafter, the amount of interest payable on this Security shall be computed on the basis of a 360-day year and the actual number of days elapsed.

(f) To Whom Interest is Payable. Interest shall be payable to the Person in whose name the CENts are registered at the close of business on the Regular Record Date next preceding the Interest Payment Date, except that (i) interest payable on the CENts pursuant to any repayment in accordance with Article III and (ii) interest payable on the Final Repayment Date of the CENts shall be paid to the Person to whom principal is paid.

(g) Option to Defer Interest Payments. Article XIII of the Indenture shall not apply to the CENts, which shall be governed by the following provisions.

(i) The Company shall have the right, at any time and from time to time prior to the Final Repayment Date to defer the payment of interest on the CENts for one or more consecutive Interest Periods that do not exceed 10 years; *provided* that no Deferral Period shall extend beyond the Final Repayment Date or the earlier repayment or redemption in full of the CENts; *provided, further*, that if the Company has given notice of its election to defer interest payments but the Deferral Period has not yet commenced or a Deferral Period is continuing or the Company is in default regarding its payment of any obligation under the Guarantee, the Company shall not, and shall not permit any Subsidiary, subject to the exceptions specified in clause (ii) of this Section 2.1(g), to: (a) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any of the Company's capital stock, (b) make any payment of principal of, or interest or premium, if any, on, or repay,

repurchase or redeem any of the Company's Parity Securities or any of the Company's debt securities that rank junior to the CENts, or (c) make any guarantee payments with respect to any guarantee by the Company of the debt securities of any Subsidiary if such guarantee ranks equally with or junior in interest to the CENts. The Company shall provide notice to the Federal Reserve upon the commencement of any Deferral Period.

(ii) Notwithstanding the restrictions listed in clause (i) of this Section 2.1(g), during any Deferral Period, the Company may:

(A) make dividends or distributions on any class of the Company's capital stock payable in the same class of the Company's capital stock;

(B) make payments under the Guarantee;

(C) make any declaration of a dividend in connection with the implementation of a shareholders' rights plan or the redemption or repurchase of any rights under any such plan;

(D) purchase the Company's Common Stock related to (x) the issuance of common stock or rights under any of the Company's benefit plans for its directors, officers or employees; (y) the issuance of Common Stock or rights under a dividend reinvestment or stock purchase plan; (z) the issuance of common stock, or securities convertible into common stock, as consideration in an acquisition transaction entered into prior to beginning of the applicable Deferral Period;

(E) make payments of current interest in respect of Parity Securities that are made *pro rata* in respect of the amounts due on such Parity Securities and the CENts and make payments of deferred interest on Parity Securities that, if not made, would cause the Company to breach the terms of the instrument governing such Parity Securities; *provided* that such payments are made in accordance with Section 2.1(i) to the extent it applies; or

(F) make payments of principal in respect of Parity Securities having an earlier scheduled maturity date than the CENts, as required under a provision of such Parity Securities that is substantially the same as Section 2.1(d), and make payments in respect of Parity Securities having the same scheduled maturity date as the CENts, as required by such a provision, and that are made on a *pro rata* basis among one or more series of Parity Securities having such a provision and the CENts.

(iii) At the end of any Deferral Period the Company shall pay all deferred interest on the CENts (together with Compounded Interest thereon, if any, at the rate specified for the CENts) to the extent permitted by applicable law, to the Persons in whose names that Securities are registered at the close of business on the Regular Record Date with respect to the Interest Payment Date at the end of such Deferral Period.

(iv) Subject to Section 2.1(r) and the exceptions set forth in clause (ii) of this Section 2.1(g), in the case of any Deferral Period that does not terminate on or prior to the first

anniversary of the commencement of such Deferral Period, the Company shall not redeem or repurchase any of its Parity Securities or any of the Company's debt securities that rank junior to the CENts, until the first anniversary of the termination of such Deferral Period.

(v) A Deferral Period shall terminate upon the payment on any Interest Payment Date (or any other date in accordance with Section 2.1(r)) of all deferred interest and any Compounded Interest then due, and the Company may elect to begin a new Deferral Period, subject to the above requirements.

(vi) The Company may elect to pay interest on any Interest Payment Date during any Deferral Period to the extent permitted by Section 2.1(h).

(vii) The Company shall give written notice of its election to begin or extend any Deferral Period (i) if the Institutional Trustee is not the sole holder or a holder of the CENts, to the Holders of the CENts at least one Business Day prior to the Regular Record Date for the next succeeding Interest Payment Date or (ii) if the Institutional Trustee is the sole holder of the CENts, at least one Business Day prior to the earlier of (a) the next Distribution Date or (b) the date the Administrative Trustees are required to give notice to any securities exchange or other applicable self-regulatory organization or to holders of such Capital Securities of the record date for such Distribution Date or of such Distribution Date, but in any event not more than 15 Business Days prior to such Distribution Date. The Administrative Trustees shall promptly give notice, in the name and at the expense of the Company, of the Company's election to begin or extend any such Deferral Period to the holders of the outstanding Capital Securities.

(h) Payment of Deferred Interest. The Company will not pay deferred interest on the CENts (and Compounded Interest thereon) prior to the Final Repayment Date on any Interest Payment Date during any Deferral Period from any source other than Eligible Proceeds. Notwithstanding the foregoing, (i) the Company may pay current interest at all times from any available funds; (ii) the Company may pay deferred interest from any available funds at any time an Event of Default has occurred and is continuing; or (iii) if the Federal Reserve disapproves of the Company's sale of Qualifying Warrants or Qualifying Non-Cumulative Preferred Stock, the Company may pay deferred interest from any source and if the Federal Reserve disapproves of the use of proceeds of the Company's sale of Qualifying Warrants or Qualifying Non-Cumulative Preferred Stock to pay deferred interest, the Company may use the proceeds for other purposes and continue to defer interest on the CENts. To the extent that the Company applies proceeds from the sale of Qualifying Warrants and Qualifying Non-Cumulative Preferred Stock to pay interest, such proceeds shall be allocated first to deferred payments of interest (including Compounded Interest thereon) in chronological order based on the date each payment was first deferred; *provided* that no such proceeds will be applied to deferred interest payments (including Compounded Interest thereon) attributable to the first five years of any Deferral Period to the extent such proceeds exceed the amounts described in clauses (1) and (2) of Section 2.1(i) until all other deferred interest payments (and Compounded Interest thereon) with respect to such Deferral Period have been paid in full. The payment of interest from any other source shall be applied to current or deferred interest (to the extent the use of such proceeds for the payment of deferred interest is permitted under this Section 2.1(h)) as directed by the Company and notified to the Institutional Trustee prior to the applicable Interest Payment Date. To the extent any payment allocable to any installment of interest (including Compounded

Interest thereon) is insufficient to pay such installment in full, such payment shall be applied *pro rata* to the outstanding CENts. If the Company has outstanding Parity Securities under which it is obligated to sell Qualifying Warrants or Qualifying Non-Cumulative Preferred Stock and apply the net proceeds to the payment of deferred interest or distributions, then on any date and for any period the amount of net proceeds received by the Company from those sales and available for payment of the deferred interest and distributions shall be applied to the CENts and those Parity Securities on a *pro rata* basis up to the warrant issuance cap, the share caps or the preferred stock issuance caps for each series of Parity Securities (or comparable provisions in the instruments governing those Parity Securities), in proportion to the total amounts that are due on the CENts and such Parity Securities, or on such other basis as the Federal Reserve may approve. The Company may make such *pro rata* payments on such Parity Securities so long as it shall have paid or deposited with the Paying Agents (or if the Company is acting as its own Paying Agent, the Company will segregate and hold in trust as provided in Section 10.3 of the Indenture) the *pro rata* amount of deferred interest payable on the CENts.

(i) Alternative Payment Mechanism. The Company shall provide notice to the Federal Reserve at least 10 Business Days prior to the commencement of any APM Period. Immediately following any APM Commencement Date and until the termination of the related Deferral Period, the Company shall, except to the extent that the Federal Reserve shall have disapproved, shall issue Qualifying Warrants and/or Qualifying Non-Cumulative Preferred Stock until the Company has raised an amount of Eligible Proceeds at least equal to the aggregate and unpaid amount of deferred interest on the CENts (including Compounded Interest thereon) and applied such Eligible Proceeds on the next Interest Payment Date to the payment of deferred interest (including Compounded Interest thereon) in accordance with Section 2.1(h); *provided* that:

(1) the foregoing obligations shall not apply to the extent that (i) the gross proceeds of any issuance of Qualifying Warrants applied during any Deferral Period to pay interest on the CENts pursuant to this Section 2.1(i), together with the gross proceeds of all prior issuances of Qualifying Warrants applied to deferred interest attributable to the first five years of such Deferral Period (including Compounded Interest thereon), would exceed an amount equal to 2% of the product of the average of the Current Stock Market Prices of the Common Stock on the 10 consecutive trading days ending on the fourth trading day immediately preceding the date of issuance multiplied by the total number of issued and outstanding shares of Common Stock as of the date of the Company's most recent publicly available consolidated financial statements (the "Warrant Issuance Cap") or (ii) the net proceeds of any issuance of Qualifying Non-Cumulative Preferred Stock applied during any Deferral Period to pay interest on the CENts pursuant to this Section 2.1(i), together with the net proceeds of all prior issuances of Qualifying Non-Cumulative Preferred Stock so applied during any prior Deferral Period, would exceed 25% of the principal amount of the CENts initially issued under the Indenture (the "Preferred Stock Issuance Cap"); *provided* that the Warrant Issuance Cap will cease to apply after the ninth anniversary of the commencement of any Deferral Period, at which point the Company must pay any deferred interest, to the extent not disapproved of by the Federal Reserve after notice, regardless of the time at which it was deferred, pursuant to this Section 2.1(i), subject to any Market Disruption Event; and *provided*, *further*, that if the Warrant Issuance Cap is reached during a Deferral Period

and the Company subsequently repays all deferred interest, the Warrant Issuance Cap will cease to apply at the termination of such Deferral Period and will not apply again unless and until the Company starts a new Deferral Period;

(2) notwithstanding the provisions of clause (1) of this Section 2.1(i), the Company shall not issue Qualifying Warrants pursuant to this Section 2.1(i) for the purpose of paying deferred interest on the CENts (including Compounded Interest thereon) to the extent that the total number of shares of Common Stock underlying such Qualifying Warrants, together with all Qualifying Warrants previously issued pursuant to this Section 2.1(i) exceeds 50 million shares (the "Share Cap"); *provided* that, if the number of issued and outstanding shares of Common Stock is changed into a different number of shares or a different class by reason of any stock split, reverse stock split, stock dividend, reclassification, recapitalization, split-up, combination, exchange of shares or other similar transaction, then the Share Cap shall be correspondingly adjusted in a manner reasonably determined by the Company. The Company shall use its commercially reasonable efforts to (x) increase the Share Cap from time to time to a number of shares of Common Stock that the Company determines would enable it to issue sufficient Qualifying Warrants to satisfy its obligations under this Section 2.1(i); and (y) subject to the Share Cap, set the terms of the Qualifying Warrants so as to raise sufficient Eligible Proceeds from their issuance to pay all unpaid deferred interest on the CENts (and Compounded Interest thereon) in accordance with this Section 2.1(i);

(3) the foregoing obligations shall not apply in respect of any Interest Payment Date if the Company shall have provided to the Trustee (and to the Institutional Trustee of the Trust to the extent it is the Holder of the CENts) no more than 15 and no less than 10 Business Days prior to such Interest Payment Date an Officers' Certificate stating that (i) a Market Disruption Event was existing after the immediately preceding Interest Payment Date and (ii) either (A) the Market Disruption Event continued for the entire period from the Business Day immediately following the preceding Interest Payment Date to the Business Day immediately preceding the date on which such Officers' Certificate is provided or (B) the Market Disruption Event continued for only part of such period but the Company was unable after commercially reasonable efforts to raise sufficient Eligible Proceeds during the rest of that period to pay all accrued and unpaid interest due on the Interest Payment Date with respect to which such Officers' Certificate is being delivered; and

(4) to the extent that the Company has raised some but not all Eligible Proceeds necessary to pay all deferred interest (including Compounded Interest thereon) on any Interest Payment Date pursuant to this Section 2.1(i) and subject to the Share Cap, Warrant Issuance Cap and the Preferred Stock Issuance Cap, such Eligible Proceeds shall be applied in accordance with Section 2.1(h).

For the avoidance of doubt, once the Company reaches the Warrant Issuance Cap for a Deferral Period, the Company shall not be required to issue more Qualifying Warrants with respect to deferred interest attributable to the first five years of any Deferral Period (including Compounded Interest thereon) pursuant to this Section 2.1(i) even if the amount referred to in clause (1)(i) of this Section 2.1(i) subsequently increases because of a subsequent increase in the

sale price of Common Stock or the number of outstanding shares of Common Stock. The Company shall not be excused from its obligations under this Section 2.1(i) if it determines not to pursue or complete the sale of Qualifying Warrants or Qualifying Non-Cumulative Preferred Stock due to pricing, dividend rate or dilution considerations.

(j) Events of Default. Solely for purposes of the CENts, Section 5.1(a) of the Indenture shall be replaced by the following:

"(a) default in the payment of interest, including Compounded Interest, in full on any CENts for a period of 30 days after the conclusion of a 10-year period following the commencement of any Deferral Period;".

For the avoidance of doubt, and without prejudice to any other remedies that may be available to the Trustee, the Holders of the CENts or the holders of the Capital Securities under the Indenture, no breach by the Company of any other covenant or obligation under the Indenture or the terms of the CENts shall be an Event of Default with respect to the CENts.

(k) Acceleration of Maturity. Solely for purposes of the CENts, Section 5.2 of the Indenture shall be replaced by the following:

"If an Event of Default under Section 5.1(a) with respect to CENts 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 CENts then Outstanding may declare the principal amount of, and accrued interest (including Compounded Interest) on, all the CENts to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), *provided* that, in the case of the Securities of a series issued to a Trust, if, upon an Event of Default, the Trustee or the Holders of not less than 25% in principal amount of the CENts then Outstanding fail to declare the principal amount of all the CENts to be immediately due and payable, the holders of at least 25% in aggregate liquidation amount of the Capital Securities then outstanding shall have such right by a notice in writing to the Company and the Trustee; and upon any such declaration such principal amount (or specified portion thereof) of and the accrued interest (including any Compounded Interest) on all the CENts shall become immediately due and payable. Payment of principal and interest (including any Compounded Interest) on such CENts shall remain subordinated to the extent provided in Article XIV notwithstanding that such amount shall become immediately due and payable as herein provided. If an Event of Default specified in Section 5.1(b), (c) or (d) occurs, the principal amount of all the CENts shall automatically, and without any declaration or other action on the part of the Trustee or any Holder, become immediately due and payable.

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

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

(A) all overdue installments of interest (including any Compounded Interest) on all the CENts,

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

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

(2) all Events of Default with respect to the CENts, other than the non-payment of the principal of the CENts which has become due solely by such acceleration, have been cured or waived as provided in Section 5.6; *provided* that, if the Holders of at least a majority in principal amount of the Outstanding CENts fails to rescind and annul such declaration and its consequences, the holders of a majority in aggregate liquidation amount of the Capital Securities then outstanding shall have such right by written notice to the Company and the Trustee, subject to the satisfaction of the conditions set forth in Clauses (1) and (2) above of this Section 5.2.

No such rescission shall affect any subsequent default or impair any right consequent thereon."

(l) Redemption. The CENts shall be redeemable in accordance with Article 11 of the Indenture, *provided* that:

(i) Solely for purposes of the CENts, Section 11.8(c) of the Indenture shall be replaced by the following:

"(c) then, notwithstanding Section 11.2(a) but subject to Section 11.2(b) and Section 11.1, the Company shall have the right upon not less than 30 days nor more than 60 days notice to the Holders of Securities of the series issued to such Capital One Trust, or to its Institutional Trustee, to redeem such Securities, in whole but not in part, for cash within 90 days following the occurrence of such Tax Event at a Redemption Price equal to, (1) 100% of the principal amount of the Securities then Outstanding or (2) in the case of any redemption prior to February 17, 2032, if greater, the Make-Whole Redemption Price, in each case, plus accrued and unpaid interest to the Redemption Date, *provided* that if at the time of the occurrence of such Tax Event there is available to the Company or the Trust the opportunity to eliminate, within such 90-day period, the Tax Event by taking some ministerial action ("Ministerial Action"), such as filing a form or making an election, or pursuing some other similar reasonable

measure which has no adverse effect on the Company, the Trust or the holders of the Trust Securities of the Trust, the Company or the Trust shall pursue such Ministerial Action in lieu of redemption, and, *provided*, *further*, that the Company shall have no right to redeem such Securities while the Company or such Capital One Trust is pursuing any Ministerial Action pursuant to its obligations under the Declaration of Trust."

(ii) The CENts are redeemable (a) in whole or in part at the option of the Company at any time after the Original Issue Date at a Redemption Price equal to (1) 100% of the principal amount of such CENts plus accrued and unpaid interest to the Redemption Date or (2) in the case of any such redemption prior to February 17, 2032, if greater, the Make-Whole Redemption Price, (b) pursuant to Section 11.8 of the Indenture, as herein restated, (c) pursuant to clause (iii) of this Section 2.1(l), or (d) upon the occurrence and during the continuation of a Capital Treatment Event or Investment Company Event, at any time within 90 days following the occurrence of such Capital Treatment Event or Investment Company Event, in each case in whole but not in part at a Redemption Price equal to 100% of the principal amount of the CENts plus accrued and unpaid interest to the Redemption Date.

(iii) The CENts are redeemable in whole but not in part, for cash within 90 days following the occurrence of a Rating Agency Event at a Redemption Price equal to, (1) 100% of the principal amount of the CENts then outstanding or (2) in the case of any redemption prior to February 17, 2032, if greater, the Make-Whole Redemption Price, in each case, plus accrued and unpaid interest to the Redemption Date.

(m) Replacement Capital Covenant. The Company shall not amend the Replacement Capital Covenant to impose additional restrictions on the type or amount of Qualifying Capital Securities for purposes of determining the extent to which repayment, redemption or repurchase of the CENts or Capital Securities is permitted, except with the consent of the holders of a majority by liquidation amount of the Capital Securities or, if the CENts have been distributed to the holders of Capital Securities, a majority by principal amount of the CENts.

(n) Limitation on Claims in the Event of Bankruptcy, Insolvency or Receivership. Each Holder, by such Holder's acceptance of the CENts, agrees that if a Bankruptcy Event shall occur prior to the redemption or repayment of such CENts, such Holder shall have no claim for, and thus no right to receive, any interest deferred pursuant to Section 2.1(g) (including Compounded Interest thereon) that has not been paid pursuant to Section 2.1(h) to the extent the amount of such interest exceeds the sum of (i) the earliest two years of accumulated and unpaid interest (including Compounded Interest thereon) on such Holder's CENts and (ii) an amount equal to the excess, if any, of the Preferred Stock Issuance Cap over the aggregate amount of net proceeds from the sale of Qualifying Non-Cumulative Preferred Stock that the Company has applied to pay such interest pursuant to Section 2.1(i); *provided* that the Holders of CENts will be deemed to agree that the amount they receive in respect of the excess, if any, of the remaining claim over the amount set forth in clause (i) will not exceed the amount they would have received had such claim ranked *pari passu* with the claims of the holders, if any, of Qualifying Non-Cumulative Preferred Stock.

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

(p) Forms. The CENts 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.

(q) Subordination. The subordination provisions of Article XIV of the Indenture shall apply; *provided* that for the purpose of the CENts (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, with respect to the Company: (1) the principal, premium, if any, and interest in respect of (a) indebtedness for money borrowed and (b) indebtedness evidenced by securities, notes, debentures, bonds or other similar instruments issued 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 CENts; (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 our conditional sale obligations and all of the Company's obligations under any title retention agreement, but excluding trade accounts payable and other accrued liabilities arising in the ordinary course of business; (4) all of the Company's obligations, contingent or otherwise, in respect of any letters of credit, bankers' acceptances, security purchase facilities, repurchase agreements or similar credit transactions; (5) all of the Company's obligations in respect of interest rate swap, cap or other agreements, interest rate future or option contracts, currency swap agreements, currency future or option contracts, hedging arrangements and other similar agreements; (6) all obligations of the type referred to in clauses (1) through (5) above of other persons for the payment of which we are responsible or liable as obligor, guarantor or otherwise; and (7) all obligations of the type referred to in clauses (1) through (6) above of other persons secured by any lien on any of 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; (B) the Guarantee; (C) any indebtedness or guarantee that is by its terms subordinated to, or ranks *pari passu* with, the CENts 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 Bank of Richmond or the staff of the Federal Reserve or (y) does not at the time of issuance prevent the CENts from qualifying for Tier 1 capital

treatment (irrespective of any limits on the amount of the Company's Tier 1 capital) under the applicable capital adequacy guidelines, regulations, policies or published interpretations of the Federal Reserve; and (D) (x) the Company's 7.50% junior subordinated debt securities due June 15, 2066 issued in connection with the June 2006 offering of 7.50% capital securities of Capital One Capital II and the Company's guarantee of these capital securities; and (y) the 7.686% junior subordinated debt securities due August 1, 2066 issued in connection with the August 2006 offering of 7.686% capital securities of Capital One Capital III and the Company's guarantee of these capital securities.

(r) Business Combinations. If the Company engages in any transaction that is subject to Section 8.1 of the Indenture, where immediately after the consummation of such transaction more than 50% of the voting stock of the Person formed by such transaction, or the Person that is the surviving entity of such transaction, or the Person to whom such properties and assets are conveyed, transferred or leased in such transaction, is owned by the shareholders of the other party to such transaction, then neither clause (iv) of Section 2.1(g) nor Section 2.1(h) shall apply to any Deferral Period that is terminated on the next Interest Payment Date following the date of consummation of such transaction (or if later, at any time within 90 days following the date of such consummation).

(s) Defeasance. Sections 4.2 through 4.7 of the Indenture shall not apply to the CENts.

ARTICLE III

REPAYMENT OF THE DEBENTURES

3.1. Repayment. The Company shall, not less than 15 nor more than 10 Business Days prior to each Repayment Date (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of the principal amount of CENts to be repaid on such date pursuant to Section 2.1(d).

3.2. Selection of Securities to be Repaid. If less than all the CENts are to be repaid on any Repayment Date (unless such repayment affects only a single Junior Subordinated Debt Security), the particular CENts to be repaid shall be selected not more than 60 days prior to such Repayment Date by the Trustee, from the Outstanding CENts not previously repaid or called for redemption, by lot or such other method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of a portion of the principal amount of any CENts, *provided* that the portion of the principal amount of any CENts not repaid shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such CENts.

The Trustee shall promptly notify the Company in writing of the CENts selected for partial repayment and the principal amount thereof to be repaid. For all purposes hereof, unless the context otherwise requires, all provisions relating to the repayment of CENts shall relate, in

the case of any CENts repaid or to be repaid only in part, to the portion of the principal amount of such CENts which has been or is to be repaid. If the Company shall so direct, CENts registered in the name of the Company, any Affiliate or any Subsidiary thereof shall not be included in the CENts selected for repayment.

3.3. Notice of Repayment. Notice of repayment shall be given by first-class mail, postage prepaid, mailed not later than the 15th day, and not earlier than the 10th day, prior to the Repayment Date, to each Holder of Securities to be repaid, at the address of such Holder as it appears in the Securities Register.

Each notice of repayment shall identify the CENts to be repaid (including CUSIP number, if a CUSIP number has been assigned to the CENts) and shall state:

(a) the Repayment Date;

(b) if less than all Outstanding CENts are to be repaid, the identification (and, in the case of partial repayment, the respective principal amounts) of the particular CENts to be redeemed;

(d) that on the Repayment Date, the principal amount of the CENts to be repaid will become due and payable upon each such CENts or portion thereof, and that interest thereon, if any, shall cease to accrue on and after said date; and

(e) the place or places where such CENts are to be surrendered for payment of the principal amount thereof.

Notice of repayment shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company and shall be irrevocable. The notice if mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. In any case, a failure to give such notice by mail or any defect in the notice to the Holder of any CENts designated for repayment as a whole or in part shall not affect the validity of the proceedings for the repayment of any other CENts.

3.4. Deposit of Repayment Amount. Prior to 10:00 a.m. New York City time on the Repayment Date specified in the notice of repayment given as provided in Section 3.3, the Company will deposit with the Trustee or with one or more Paying Agents (or if the Company is acting as its own Paying Agent, the Company will segregate and hold in trust as provided in Section 10.3 of the Indenture) an amount of money sufficient to pay the principal amount of, and any accrued interest (including Compounded Interest) on, all the CENts which are to be repaid on that date.

3.5. Payment of CENts Subject to Repayment. If any notice of repayment has been given as provided in Section 3.3, the CENts or portion of the CENts with respect to which such notice has been given shall become due and payable on the date and at the place or places stated in such notice. On presentation and surrender of such CENts at a place of payment in said notice specified, the said securities or the specified portions thereof shall be paid by the Company at their principal amount, together with accrued interest (including any Compounded Interest) to

the Repayment Date; *provided, however,* that installments of interest whose Stated Maturity is on or prior to the Repayment Date will be payable to the Holders of such CENts, or one or more Predecessor Securities, registered as such at the close of business on the relevant Record Dates according to their terms and the provisions of Section 3.7 of the Indenture.

Upon presentation of any CENts repaid in part only, the Company shall execute and the Trustee shall authenticate and make available for delivery to the Holder thereof, at the expense of the Company, new CENts or CENts, of authorized denominations, in aggregate principal amount equal to the portion of the CENts not repaid and so presented and having the same original issue date, Stated Maturity and terms. If a Global Security is so surrendered, such new Security will also be a new Global Security.

If any CENts called for repayment shall not be so paid upon surrender thereof, the principal of such CENts shall, until paid, bear interest from the Repayment Date at the rate prescribed therefore in the CENts.

ARTICLE IV

MISCELLANEOUS

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

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

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

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

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

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

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

*** * * ***

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

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

CAPITAL ONE FINANCIAL CORPORATION

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

THE BANK OF NEW YORK,
as Trustee

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

Annex A – Form of CENts

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

[IF THE SECURITY IS TO BE A GLOBAL SECURITY HELD BY DTC, INSERT- 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

6.745% Capital Efficient Note due 2082

No.

$

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 The Bank of New York, as Institutional Trustee of Capital One Capital IV, or registered assigns, the principal sum of dollars ($) on February 5, 2082, or if such day is not a Business Day (as hereinafter defined), the following Business Day (the "Final Repayment Date"); *provided* that the principal amount of, and all accrued and unpaid interest on, this Security shall be payable in full on February 17, 2037, or if such day is not a Business Day, the following Business Day (the "Scheduled Maturity Date") or any subsequent Interest Payment Date (as hereinafter defined) to the extent set forth in the Supplemental Indenture hereinafter referred to. The Company further promises to pay interest on said principal sum from February 5, 2007 or from the most recent Interest Payment Date for which interest has been paid or duly provided for. This Security shall bear interest (i) from and including February 5, 2007 to but excluding February 17, 2032, at the rate of 6.745% per annum, (ii) thereafter, to and excluding the Scheduled Maturity Date, at an annual rate equal to One-month LIBOR (as defined in the Supplemental Indenture) plus 1.17%, and (iii) thereafter, at an annual rate equal to One-month LIBOR plus 2.17%, until the principal thereof is paid or duly provided for or made available payment. Interest on the Security shall be payable (subject to deferral as set forth herein) (i) semi-annually in arrears on February 17 and August 17 of each year, commencing on August 17, 2007, to and including February 17, 2032, and (ii) thereafter, on the 17th day of each month, or if such day is not a Business Day, the following Business Day and no interest will

accrue as a result of such postponement (each such day referred to in clause (i) or (ii), an "Interest Payment Date"). In the event any Interest Payment Date on or before February 17, 2032 is not a Business Day, that Interest Payment Date will be postponed to the next day that is a Business Day and no interest will accrue as a result of such postponement. In the event that any Interest Payment Date after February 17, 2032 would otherwise fall on a day that is not a Business Day, that Interest Payment Date will be postponed to the next day that is a Business Day; *provided* that if the postponement would cause the day to fall in the next calendar month, the Interest Payment Date will instead be brought forward to the immediately preceding Business Day.

From and including February 5, 2007 to but excluding February 17, 2032, the amount of interest payable on this Security shall be computed on the basis of a 360-day year comprised of twelve 30-day months; thereafter, the amount of interest payable on this Security shall be computed on the basis of a 360-day year and the actual number of days elapsed. A "Business Day" shall mean any day other than (i) a Saturday or Sunday or other day on which banking institutions in The City of New York are authorized or required by law or executive order to remain closed or (ii) on or after February 17, 2032, a day on which dealings in deposits in U.S. dollars are transacted in the London interbank market. Each interest installment payable hereunder, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest installment, which shall be (i) the Business Day next preceding such Interest Payment Date if this Security is issued in the form of a Global Security, or (ii) the fifteenth day (whether or not a Business Day) preceding such Interest Payment Date if this Security is not issued in the form of a Global Security. Any such interest installment not so punctually paid or duly provided for shall forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Securities of this series not less than 10 days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Securities of this series may be listed or traded, and upon such notice as may be required by such exchange or self regulatory organization, all as more fully provided in said Indenture.

The Company shall have the right, at any time and from time to time prior to the Final Repayment Date to defer the payment of interest on this Security for one or more consecutive Interest Periods that do not exceed 10 years; *provided*, that no Deferral Period (as hereinafter defined) shall extend beyond the Final Repayment Date or the earlier repayment or redemption in full of the Security; *provided*, further, that during any such Deferral Period (and with respect to the ability of the Company to redeem or repurchase any of the Company's Parity Securities or securities that rank junior in interest to this Security, except as provided below with respect to certain transactions, in the case of any Deferral Period that does not terminate on or prior to the first anniversary of the commencement of such Deferral Period, until the first anniversary of the termination of such Deferral Period), if the Company has given notice of its election to defer interest payments but the Deferral Period has not yet commenced or a Deferral Period is continuing or the Company is in default regarding its payment of any obligation under its

guarantee regarding the Trust (the "Guarantee"), the Company shall not, and shall not permit any Subsidiary, subject to certain covenants set forth in the Indenture, to: (i) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any of the Company's capital stock, (ii) make any payment of principal of or interest or premium, if any, on or repay, repurchase or redeem any of the Company's Parity Securities (as defined in the Supplemental Indenture) or any of the Company's debt securities that rank junior to the Security, or (iii) make any guarantee payments with respect to any guarantee by the Company of the debt securities of any Subsidiary if such guarantee ranks equally with or junior in interest to the Security. Notwithstanding the foregoing restrictions, during any Deferral Period, the Company may (a) make dividends or distributions on any class of the Company's capital stock payable in the same class of the Company's capital stock; (b) make payments under the Guarantee; (c) make any declaration of a dividend in connection with the implementation of a shareholders' rights plan or the redemption or repurchase of any rights under any such plan; (d) purchase the Company's common stock related to (A) the issuance of common stock or rights under any of the Company's benefit plans for its directors, officers or employees; (B) the issuance of common stock of the Company or rights under a dividend reinvestment or stock purchase plan; (C) the issuance of common stock, or securities convertible into common stock, as consideration in an acquisition transaction entered into prior to beginning of the applicable Deferral Period; (e) make payments of current interest in respect of Parity Securities that are made *pro rata* in respect of the amounts due on such Parity Securities and this Security and make payments of deferred interest on Parity Securities that, if not made, would cause the Company to breach the terms of the instrument governing such Parity Securities; *provided* that such payments are made in accordance with Section 2.1(i) of the Supplemental Indenture to the extent it applies; or (f) make payments of principal in respect of Parity Securities having an earlier maturity date than, or the same scheduled maturity date as, the Security, as required under a provision of such Parity Securities that is substantially the same as the provision described in Section 2.1(d) of the Supplemental Indenture, and that are made on a *pro rata* basis among one or more series of Parity Securities having such a provision and this Security.

Each period beginning on the Interest Payment Date with respect to which the Company elects to defer all or part of any interest payment and ending on the earlier of (i) the Interest Payment Date falling on or about the tenth anniversary of such Interest Payment Date and (ii) the next Interest Payment Date on which the Company has paid the deferred amount, all deferred amounts with respect to any subsequent period and all other accrued interest on this Security is referred to as a "Deferral Period". Subject to Section 2.1(r) of the Supplemental Indenture in connection with a Business Combination (as defined therein), at the end of any such Deferral Period, the Company shall pay all interest then accrued and unpaid on this Security (together with Compounded Interest thereon, if any, to the extent permitted by applicable law) to the Person in whose name this Security is registered at the close of business on the Regular Record Date with respect to the Interest Payment Date at the end of such Deferral Period. Upon termination of any Deferral Period and upon the payment of all accrued and unpaid interest and any Compounded Interest then due, the Company may elect to begin a new Deferral Period, subject to the above requirements. The Company may elect to pay current interest on any Interest Payment Date during any Deferral Period to the extent permitted, and shall pay deferred interest (including Compounded Interest thereon) to the extent required, by the Supplemental Indenture.

The Company shall give written notice of its election to begin or extend any Deferral Period (i) if the Institutional Trustee is not the sole holder or a holder of the Securities, to the Holders of the Securities at least one Business Day prior to the Regular Record Date for the next succeeding Interest Payment Date or, (ii) if the Institutional Trustee is the sole holder of the Securities, at least one Business Day prior to the earlier of (a) the next Distribution Date or (b) the date the Administrative Trustees are required to give notice to any securities exchange or other applicable self-regulatory organization or to holders of such Capital Securities of the record date for such Distribution Date or of such Distribution Date, but in any event not more than 15 Business Days prior to such Distribution Date.

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

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

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

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

CAPITAL ONE FINANCIAL CORPORATION

By: ____________________
Name:
Title:

Attest:

____

Dated:

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

THE BANK OF NEW YORK
as Trustee

By: ____________________
Name:
Title:

Dated:

REVERSE OF SECURITY

This Security is one of a duly authorized issue of securities of the Company (herein called the "Securities"), issued and to be issued in one or more series under an Indenture, dated as of June 6, 2006 (herein called the "Indenture", and such supplemental indenture dated as of February 5, 2007, herein called the "Supplemental Indenture"), between the Company and The Bank of New York, as Trustee (herein called the "Trustee," which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Trustee, the Company and the Holders of the Securities, and of the terms upon which the Securities are, and are to be, authenticated and delivered. This Security is one of the series designated on the face hereof, limited in aggregate principal amount of $600,010,000. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Indenture, as supplemented by the Supplemental Indenture.

All terms used in this Security that are defined in the Supplemental Indenture, in the Indenture or in the Amended and Restated Declaration of Trust, dated as of February 5, 2007 (the "Declaration of Trust"), for Capital One Capital IV, among the Company, as Sponsor, The Bank of New York, as institutional trustee (the "Institutional Trustee") and certain employees of the Company as administrative trustees (the "Administrative Trustees"), shall have the meanings assigned to them in the Supplemental Indenture, the Indenture or the Declaration of Trust, as the case may be.

The Company may, at its option, and subject to the terms and conditions of the Supplemental Indenture and Article XI of the Indenture, redeem this Security in whole or in part at any time at a price equal to the greater of (1) 100% of the principal amount of this Security; or (2) in the case of a redemption prior to February 17, 2032, if greater, the sum of the present values of the remaining scheduled payments of principal discounted from February 17, 2032 and interest thereon that would have been payable to and including February 17, 2032 (not including any portion of such payments of interest accrued as of the Redemption Date), discounted from February 17, 2032 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 0.375%, in each case plus accrued and unpaid interest.

Upon the occurrence and during the continuation of a Tax Event, Rating Agency Event, Capital Treatment Event or Investment Company Event in respect of the Trust, the Company may, at its option, at any time within 90 days of the occurrence of such Tax Event, Ratings Agency Event, Capital Treatment Event or Investment Company Event, redeem this Security, in whole but not in part, subject to Section 11.8 of the Indenture, the other provisions of Article XI of the Indenture and Section 2.1(l) of the Supplemental Indenture. For a Capital Treatment Event or Investment Company Event, the redemption price shall be equal to 100% of the principal amount thereof plus accrued and unpaid interest. For a Tax Event or Rating Agency Event, the redemption price shall be equal to the greater of (1) 100% of the principal amount of this Security (plus accrued and unpaid interest through the Redemption Date); or (2) in the case of a redemption prior to February 17, 2032, if greater, the sum of the present values of the remaining scheduled payments of principal discounted from February 17, 2032 and interest thereon that would have been payable to and including February 17, 2032 (not including any

portion of such payments of interest accrued as of the Redemption Date), discounted from February 17, 2032 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 0.500%, in each case plus accrued and unpaid interest to the Redemption Date.

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

As provided in and subject to the provisions of the Indenture, if an Event of Default arising from a default in the payment of interest (including Compounded Interest), in full for a period of 30 days after the conclusion of a 10-year period following the commencement of any Deferral Period with respect to the Securities at the time Outstanding occurs and is continuing, then and in each such case that the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities may declare the principal amount, and accrued interest (including Compounded Interest), of all the Securities of this series to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), *provided* that if, upon such an Event of Default, the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities fail to declare the principal amount of all the Securities to be immediately due and payable, the holders of at least 25% in aggregate liquidation amount of the Capital Securities then outstanding shall have such right by a notice in writing to the Company and the Trustee; and upon any such declaration such principal amount (or specified portion thereof) of and the accrued interest (including any Compounded Interest) on all the Securities shall become immediately due and payable; *provided* that the payment of principal and interest (including any Compounded Interest) on such Securities shall remain subordinated to the extent provided in Article XIV of the Indenture.

Each Holder, by such Holder's acceptance hereof, agrees that if a Bankruptcy Event shall occur prior to the redemption or repayment of this Security, such Holder shall have no claim for, and thus no right to receive, any interest deferred pursuant to the Supplemental Indenture (including Compounded Interest thereon) that has not been paid out of the proceeds of the issuance of Qualifying Warrants or Qualifying Non-Cumulative Preferred Stock in accordance with the Supplemental Indenture to the extent the amount of such interest exceeds the sum of (i) the earliest two years of accumulated and unpaid interest (including Compounded Interest thereon) on this Security and (ii) an amount equal to the *pro* rata share with respect to this Security of the excess, if any, of the Preferred Stock Issuance Cap over the aggregate amount of net proceeds from the sale of Qualifying Non-Cumulative Preferred Stock that the Company has applied to pay deferred interest on the Securities of this Series pursuant to Section 2.1(i) of the Supplemental Indenture; *provided* that the Holder of this Security, by its acceptance hereof, is deemed to have agreed that the amount such Holder shall receive in respect of the excess, if any, of the remaining claim over the amount set forth in clause (i) will not exceed the amount they would have received had such claim ranked *pari passu* with the interests of the holders, if any, of Qualifying Non-Cumulative Preferred Stock.

No reference herein to the Indenture or the Supplemental Indenture and no provision of this Security or of the Indenture or the Supplemental 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.

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

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

The Company and, by its acceptance of this Security or a beneficial interest therein, the Holder of, and any Person that acquires 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, THE SUPPLEMENTAL INDENTURE AND THIS SECURITY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

Exhibit 4.3

EXECUTION VERSION

AMENDED AND RESTATED DECLARATION

OF TRUST

CAPITAL ONE CAPITAL IV

Dated as of February 5, 2007

TABLE OF CONTENTS

Page

ARTICLE I
INTERPRETATION AND DEFINITIONS

SECTION 1.1	Definitions.	1

ARTICLE II
TRUST INDENTURE ACT

SECTION 2.1	Trust Indenture Act; Application.	8
SECTION 2.2	Lists of Holders of Securities.	8
SECTION 2.3	Reports by the Institutional Trustee.	9
SECTION 2.4	Periodic Reports to Institutional Trustee.	9
SECTION 2.5	Evidence of Compliance with Conditions Precedent.	9
SECTION 2.6	Trust Enforcement Events; Waiver.	9
SECTION 2.7	Trust Enforcement Event; Notice.	10

ARTICLE III
ORGANIZATION

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.	11
SECTION 3.7	Prohibition of Actions by the Trust and the Trustees.	14
SECTION 3.8	Powers and Duties of the Institutional Trustee.	14
SECTION 3.9	Certain Duties and Responsibilities of the Institutional Trustee.	16
SECTION 3.10	Certain Rights of Institutional Trustee.	18
SECTION 3.11	Delaware Trustee.	19
SECTION 3.12	Execution of Documents.	19
SECTION 3.13	Not Responsible for Recitals or Issuance of Securities.	20
SECTION 3.14	Duration of Trust.	20
SECTION 3.15	Mergers.	20
SECTION 3.16	Paying Agent.	21

TABLE OF CONTENTS
(continued)

		Page
	ARTICLE IV SPONSOR	
SECTION 4.1	Sponsor’s Purchase of Common Securities.	22
SECTION 4.2	Responsibilities of the Sponsor.	22
	ARTICLE V TRUSTEES	
SECTION 5.1	Number of Trustees.	22
SECTION 5.2	Delaware Trustee.	22
SECTION 5.3	Institutional Trustee; Eligibility.	23
SECTION 5.4	Qualifications of Administrative Trustees and Delaware Trustee Generally.	23
SECTION 5.5	Initial Trustees; Additional Powers of Administrative Trustees.	24
SECTION 5.6	Appointment, Removal and Resignation of Trustees.	24
SECTION 5.7	Vacancies among Trustees.	26
SECTION 5.8	Effect of Vacancies.	26
SECTION 5.9	Meetings.	26
SECTION 5.10	Delegation of Power.	26
SECTION 5.11	Merger, Conversion, Consolidation or Succession to Business.	27
	ARTICLE VI DISTRIBUTIONS	
SECTION 6.1	Distributions.	27
	ARTICLE VII ISSUANCE OF SECURITIES	
SECTION 7.1	General Provisions Regarding Securities.	27
SECTION 7.2	Issuance of Securities; Purchase of Notes.	28
	ARTICLE VIII TERMINATION OF TRUST	
SECTION 8.1	Termination of Trust.	29
	ARTICLE IX TRANSFER OF INTERESTS	
SECTION 9.1	Transfer of Securities.	29
SECTION 9.2	Transfer of Certificates.	30
SECTION 9.3	Deemed Security Holders.	30

TABLE OF CONTENTS
(continued)

		Page
SECTION 9.4	Book Entry Interests.	30
SECTION 9.5	Notices to Clearing Agency.	31
SECTION 9.6	Appointment of Successor Clearing Agency.	31
SECTION 9.7	Definitive Capital Security Certificates.	31
SECTION 9.8	Mutilated, Destroyed, Lost or Stolen Certificates.	32

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

SECTION 10.1	Liability.	32
SECTION 10.2	Exculpation.	32
SECTION 10.3	Fiduciary Duty.	33
SECTION 10.4	Indemnification.	34
SECTION 10.5	Outside Businesses.	36

ARTICLE XI
ACCOUNTING

SECTION 11.1	Fiscal Year.	36
SECTION 11.2	Certain Accounting Matters.	36
SECTION 11.3	Banking.	37
SECTION 11.4	Withholding.	37

ARTICLE XII
AMENDMENTS AND MEETINGS

SECTION 12.1	Amendments.	37
SECTION 12.2	Meetings of the Holders of Securities; Action by Written Consent.	39

ARTICLE XIII
REPRESENTATIONS OF INSTITUTIONAL TRUSTEE AND DELAWARE TRUSTEE

SECTION 13.1	Representations and Warranties of Institutional Trustee.	40
SECTION 13.2	Representations and Warranties of Delaware Trustee.	41

ARTICLE XIV
MISCELLANEOUS

SECTION 14.1	Notices.	41
SECTION 14.2	Governing Law.	42
SECTION 14.3	Intention of the Parties.	42

TABLE OF CONTENTS
(continued)

		Page
SECTION 14.4	Headings.	42
SECTION 14.5	Successors and Assigns.	42
SECTION 14.6	Partial Enforceability.	43
SECTION 14.7	Counterparts.	43

ANNEXES AND EXHIBITS

ANNEX I	Terms of 6.745% Capital Securities and 6.745% Common Securities
EXHIBIT A-1	Form of Capital Security Certificate
EXHIBIT A-2	Form of Common Security Certificate
EXHIBIT B	Specimen of Note
EXHIBIT C	Underwriting Agreement

CROSS-REFERENCE TABLE*

Section of Trust Indenture Act of 1939, as amended	Section of Declaration
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 and shall not affect the interpretation of any of its terms or provisions.

AMENDED AND RESTATED DECLARATION OF TRUST

OF

CAPITAL ONE CAPITAL IV

February 5, 2007

AMENDED AND RESTATED DECLARATION OF TRUST ("Declaration") dated and effective as of February 5, 2007, by the Trustees (as defined herein), the Sponsor (as defined herein) and by the holders, from time to time, of undivided beneficial interests in the assets of the Trust to be issued pursuant to this Declaration;

WHEREAS, the Trustees and the Sponsor established Capital One Capital IV (the "Trust"), a trust under the Statutory Trust Act (as defined herein) pursuant to a Declaration of Trust dated as of June 2, 2005 (the "Original Declaration") and a Certificate of Trust filed with the Secretary of State of the State of Delaware on June 2, 2005, for the sole purpose of issuing and selling certain securities representing undivided beneficial interests in the assets of the Trust and investing the proceeds thereof in certain Notes of the Notes Issuer;

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

WHEREAS, all of the Trustees, the Administrators, and the Sponsor, by this Declaration, amend and restate each and every term and provision of the Original Declaration; and

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

ARTICLE I

INTERPRETATION AND DEFINITIONS

SECTION 1.1 Definitions.

Unless the context otherwise requires:

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

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

(c) all references to "the Declaration" or "this Declaration" are to this Declaration as modified, supplemented or amended from time to time;

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

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

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

"Administrative Trustee": has the meaning specified in Section 5.1.

"Administrators": means those individuals named as such under the Original Declaration and who are known as Administrative Trustees under this Declaration.

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

"Alternative Payment Mechanism": has the meaning set forth in paragraph 2(c) of Annex I.

"APM Period": has the meaning set forth in paragraph 2(c) of Annex I.

"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 (i) a Saturday, Sunday or other day on which banking institutions in The City of New York are authorized or required by law or executive order to remain closed or (ii) on or after February 17, 2032, a day that is not a day on which dealings in deposits in U.S. dollars are transacted in the London interbank market.

"Capital Securities Guarantee": means the guarantee agreement dated as of February 5, 2007, of the Sponsor in respect of the Capital Securities.

"Capital Security": has the meaning specified in Section 7.1.

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

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

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

"Certificate": means a Common Security Certificate or a Capital Security Certificate.

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

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

“Closing Date”: means February 5, 2007.

“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.

“Compounded Interest”: has the meaning set forth in the Indenture.

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

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

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

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

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

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

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

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

“Eligible Proceeds”: has the meaning set forth in paragraph 2(c) of Annex I.

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

“Federal Reserve”: means the Board of Governors of the Federal Reserve System, as from time to time constituted or, if at any time after the execution of this Declaration the Federal Reserve is not existing and performing the duties now assigned to it, the body performing such duties at such time.

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

"Fiscal Year": has the meaning specified in Section 11.1.

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

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

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

"Indenture": means the Indenture dated as of June 6, 2006, between the Notes Issuer and the Indenture Trustee, as supplemented by the Third Supplemental Indenture, dated as of February 5, 2007, between the Notes Issuer and the Indenture Trustee.

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

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

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

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

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

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

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

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

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

"Market Disruption Event": has the meaning set forth in the Indenture.

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

"Non-Acceleration Period": means the period commencing immediately upon the first interest payment date with respect to which the Notes Issuer elects to defer all or part of any interest payment on the Notes, and ending on the earlier of (i) the interest payment date relating to the tenth anniversary of the commencement of the Non-Acceleration Period, (ii) the redemption of the Notes, and (iii) February 5, 2082.

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

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

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

(a) a statement that each officer signing the Officers’ Certificate has read the covenant or condition and the definitions herein 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.

“One-month LIBOR”: means, with respect to any monthly interest period beginning on or after February 17, 2032, the rate (expressed as a percentage per annum) for deposits in U.S. dollars for a one-month period commencing on the first day of that monthly interest period that appears on Telerate Page 3750 as of 11:00 a.m. (London time) on the LIBOR determination date for that monthly interest period. If such rate does not appear on Moneyline Telerate Page 3750, one-month LIBOR will be determined on the basis of the rates at which deposits in U.S. dollars for a one-month period commencing on the first day of that monthly interest period and in a principal amount of not less than $1,000,000 are offered to prime banks in the London interbank market by four major banks in the London interbank market selected by the calculation agent (after consultation with us), at approximately 11:00 a.m., London time on the LIBOR determination date for that monthly interest period. The calculation agent will request the principal London office of each of such banks to provide a quotation of its rate. If at least two such quotations are provided, one-month LIBOR with respect to that monthly interest period will be the arithmetic mean (rounded upward if necessary to the nearest whole multiple of 0.00001%) of such quotations. If fewer than two quotations are provided, one-month LIBOR with respect to that monthly interest period will be the arithmetic mean (rounded upward if necessary to the nearest whole multiple of 0.00001%) of the rates quoted by three major banks in New York City selected by the calculation agent, at approximately 11:00 a.m., New York City time, on the first day of that monthly interest period for loans in U.S. dollars to leading European banks for a one-month period commencing on the first day of that monthly interest period and in a principal amount of not less than $1,000,000. However, if fewer than three banks selected by the calculation agent to provide quotations are quoting as described above, one-month LIBOR for that monthly interest period will be the same as one-month LIBOR as determined for the previous monthly interest period or, in the case of the monthly interest period beginning on February 17, 2032, 5.32%. The establishment of one-month LIBOR for each monthly interest period by the calculation agent shall (in the absence of manifest error) be final and binding. For purposes of this

definition, "London banking day" means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London, England; "LIBOR determination date" means the second London banking day immediately preceding the first day of the relevant interest period; "MoneyLine Telerate Page" means the display on Moneyline Telerate, Inc., or any successor service, on Telerate Page 3750 or any replacement page or pages on that service; "Telerate Page 3750"' means the display designated on page 3750 on MoneyLine Telerate Page (or such other page as may replace the 3750 page on the service or such other service as may be nominated by the British Bankers' Association for the purpose of displaying London interbank offered rates for U.S. dollar deposits); and "calculation agent" means JPMorgan Chase Bank, National Association, or any other firm appointed by the Notes Issuer, acting as calculation agent for the Notes.

"Parity Securities": has the meaning set forth in paragraph 2(b) of Annex I.

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

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

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

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

"Redemption Price": has the meaning set forth in Annex I hereto.

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

"Regular Trustees", as used in the Indenture, means the Administrative Trustees.

"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.

"Replacement Capital Covenant": means the Replacement Capital Covenant, dated as of February 5, 2007, of the Notes Issuer, as the same may be amended or supplemented from time to time in accordance with the provisions thereof.

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

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

"Rule 3a-7": means Rule 3a-7 under the Investment Company Act.

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

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

“Special Event”: means a Tax Event, Rating Agency Event, Capital Treatment Event, or Investment Company Event.

“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.

“Subscription Agreement” means the subscription agreement, dated as of January 29, 2007, between the Trust and the Sponsor.

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

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

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

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

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

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

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

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

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

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

"Trust Enforcement Event": in respect of the Securities means an Indenture Event of Default has occurred and is continuing in respect of the Notes.

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

"Underwriting Agreement": means the Underwriting Agreement for the offering and sale of Capital Securities in the form of Exhibit C.

ARTICLE II

TRUST INDENTURE ACT

SECTION 2.1 Trust Indenture Act; Application.

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

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

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

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

SECTION 2.2 Lists of Holders of Securities.

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

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

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

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

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

SECTION 2.6 Trust Enforcement Events; Waiver.

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

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

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

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

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

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

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

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

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

SECTION 2.7 Trust Enforcement Event; Notice.

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

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

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

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

ARTICLE III

ORGANIZATION

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

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

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

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

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

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

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

(b) in connection with the issue and sale of the Capital Securities, to:

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

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

(iii) execute and deliver the Underwriting Agreement providing for the sale of the Capital Securities; and

(iv) execute and deliver the Subscription Agreement.

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

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

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

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

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

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

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

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

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

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

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

(n) to give prompt written notice to the Holders of the Securities of the receipt of an Officers' Certificate from the Notes Issuer stating that a Market Disruption Event has occurred as authorized by the Indenture;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) make any loans or incur any indebtedness;

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

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

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

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

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

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

SECTION 3.8 Powers and Duties of the Institutional Trustee.

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

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

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

(c) The Institutional Trustee shall:

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

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

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

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

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

such Non-Acceleration Period. Notwithstanding anything to the contrary in this Declaration or the Indenture, the Notes Issuer shall have the right to set-off any payment it is otherwise required to make under the Indenture in respect of any Capital Security to the extent the Notes Issuer has heretofore made, or is currently on the date of such payment making, a payment under the Capital Securities Guarantee or a Direct Action.

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

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

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

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

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

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

SECTION 3.9 Certain Duties and Responsibilities of the Institutional Trustee.

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 3.10 Certain Rights of Institutional Trustee.

(a) Subject to the provisions of Section 3.9:

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

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

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

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

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

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

(vii) the Institutional Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice,

request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Institutional Trustee, in its discretion, may make such reasonable further inquiry or investigation into such facts or matters as it may see fit at the expense of the Notes Issuer and shall incur no liability of any kind by reason of such inquiry or investigation;

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

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

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

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

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

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

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

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

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

SECTION 3.15 Mergers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IV

SPONSOR

SECTION 4.1 Sponsor's Purchase of Common Securities. On the Closing Date, the Sponsor will purchase all of the Common Securities issued by the Trust in an amount equal to $10,000 or more of the capital of the Trust, at the same time as the Capital Securities are sold.

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

(a) to prepare for filing by the Trust with the Commission any necessary amendments, prospectuses or other documents relating to the Trust's registration statement on Form S-3 relating to the registration under the Securities Act of the Capital Securities;

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

(c) to negotiate the terms of the Underwriting Agreement providing for the sale of the Capital Securities.

ARTICLE V

TRUSTEES

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

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

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

provided, however, that the number of Trustees shall in no event be less than two; provided further that (1) one Trustee, in the case of a natural person, shall be a person who is a resident of the State of Delaware or that, if not a natural person, shall be an entity which has its principal place of business in the State of Delaware (the "Delaware Trustee"); (2) there shall be at least one Trustee who is an employee or officer of, or is affiliated with the Sponsor (an "Administrative Trustee"); and (3) one Trustee shall be the Institutional Trustee for so long as this Declaration is required to qualify as an indenture under the Trust Indenture Act, and such Trustee may also serve as Delaware Trustee if it meets the applicable requirements.

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

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

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

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

SECTION 5.3 Institutional Trustee; Eligibility.

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

(i) not be an Affiliate of the Sponsor;

(ii) be a corporation organized and doing business under the laws of the United States of America or any State or Territory thereof or of the District of Columbia, or a corporation or Person permitted by the Commission to act as an institutional trustee under the Trust Indenture Act, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least 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 5.3(a)(ii), the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published; and

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

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

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

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

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

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

SECTION 5.5 Initial Trustees; Additional Powers of Administrative Trustees.

(a) The initial Administrative Trustees shall be:

Frank R. Borchert, III
Stephen Linehan

The initial Delaware Trustee shall be:

The Bank of New York (Delaware)
White Clay Center
Route 273
Newark, Delaware 19711

The initial Institutional Trustee shall be:

The Bank of New York
2 North LaSalle Street, Suite 1020
Chicago, Illinois 60602

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

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

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

SECTION 5.6 Appointment, Removal and Resignation of Trustees.

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

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

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

(iii) in the case of the Institutional Trustee and the Delaware Trustee, unless a Trust Enforcement Event shall have occurred and be continuing after the issuance of any Securities, by a vote or written consent of the Holders of a Majority in liquidation amount of the Common Securities voting as a class; and

(iv) in the case of the Institutional Trustee and the Delaware Trustee, if a Trust Enforcement Event shall have occurred and be continuing after the issuance of the Securities, by a vote or written consent of the Holders of a Majority in liquidation amount of the Capital Securities voting as a class.

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 5.10 Delegation of Power.

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

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

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

ARTICLE VI

DISTRIBUTIONS

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

ARTICLE VII

ISSUANCE OF SECURITIES

SECTION 7.1 General Provisions Regarding Securities.

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

(b) The Certificates shall be signed on behalf of the Trust by an Administrative Trustee. Such signature shall be the manual or facsimile signature of any present or any future Administrative Trustee. In case any Administrative Trustee of the Trust who shall have signed any of the Securities shall cease to be such Administrative Trustee before the Certificates so signed shall be delivered by the Trust, such Certificates nevertheless may be delivered as though the person who signed such Certificates had not ceased to be such Administrative Trustee; and any Certificate may be signed on behalf of the Trust by such persons who, at the actual date of execution of such Security, shall be the Administrative Trustees of the Trust, although at the date of the execution and delivery of the Declaration any such person was not such an Administrative Trustee. Certificates shall be printed, lithographed or engraved or may be produced in any other manner as is reasonably acceptable to the Administrative Trustees, as evidenced by their execution thereof, and may have such letters, numbers or other marks of identification or designation and such legends or endorsements as the Administrative Trustees may deem appropriate, or as may be required to comply with any law or with any rule or regulation of any stock exchange on which Securities may be listed, or to conform to usage.

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

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

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

SECTION 7.2 Issuance of Securities; Purchase of Notes.

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

(b) Contemporaneously with the execution and delivery of this Declaration, an Administrative Trustee, on behalf of the Trust, shall execute in accordance with Section 7.1 and deliver to the underwriters named in the Underwriting Agreement Capital Security Certificates, registered in the name of the nominee of the initial Clearing Agency, in an aggregate amount of 500,000 Capital Securities having an aggregate liquidation amount of $500,000,000, against receipt of an aggregate purchase price of such Capital Securities of $499,980,000, by the Institutional Trustee. On any one or more dates after the execution and delivery of this Declaration additional Capital Securities Certificates representing Capital Securities may be issued in accordance with Section 7.1, registered in the name of the nominee of the initial Clearing Agency, against receipt by the Property Trustee of the purchase price that is determined by the Sponsor; *provided* that the total liquidation amount of Capital Securities outstanding may not exceed $600,000,000. Such additional Capital Securities may be issued at a different offering price and accrue distributions from a different date than the Capital Securities being issued hereby.

(c) Contemporaneously with the execution and delivery of this Declaration, an Administrative Trustee, on behalf of the Trust, shall execute and deliver to the Sponsor, in its capacity as the Holder of the Common Securities, Common Security Certificates registered in the name of such Holder, evidencing 10 Common Securities having an aggregate liquidation amount of $10,000, against receipt of the aggregate purchase price of such Common Securities of $9,999.60, by the Institutional Trustee. Contemporaneously therewith and with the issuance of Capital Securities as set forth in Section 7.2(b), an Administrative Trustee, on behalf of the Trust, shall subscribe to and purchase from the Notes Issuer Notes, registered in the name of the Institutional Trustee and having an aggregate principal amount equal to $500,010,000, and, in satisfaction of the purchase price for such Notes, the Institutional Trustee, on behalf of the Trust, shall deliver to the Notes Issuer the sum of $499,989,999.60 (being the sum of the amounts delivered to the Institutional Trustee pursuant to the first sentence of Section 7.2(b) above and the first sentence of this Section 7.2(c)). In connection with any subsequent issuance of Capital Securities as set forth in the second sentence of Section 7.2(b), an Administrative Trustee, on behalf of the Trust, contemporaneously with any such additional issuance, shall subscribe to and purchase from the Notes Issuer Notes, registered in the name of the Institutional Trustee and having an aggregate principal amount equal to the aggregate liquidation amount of Capital Securities being issued by the Trust pursuant to the third sentence of Section 2.4 against payment of a purchase price equal to the aggregate purchase prices of the Capital Securities being so issued.

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 any Holder of the Common Securities or the Sponsor and the expiration of 90 days after the date of revocation without a reinstatement thereof;

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

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

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

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

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

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

ARTICLE IX

TRANSFER OF INTERESTS

SECTION 9.1 Transfer of Securities.

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

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

(c) Subject to this Article IX, the Sponsor and any Related Party may only transfer Common Securities to the Sponsor or a Related Party of the Sponsor; provided that any such transfer is subject to

the condition precedent that the transferor obtain the written opinion of nationally recognized independent counsel experienced in such matters that such transfer would not cause more than an insubstantial risk that:

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

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

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

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

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

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

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

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

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

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

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

SECTION 9.7 Definitive Capital Security Certificates. If:

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

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

then:

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

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

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

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

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

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

ARTICLE X

LIMITATION OF LIABILITY OF HOLDERS OF
SECURITIES, TRUSTEES OR OTHERS

SECTION 10.1 Liability.

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

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

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

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

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

SECTION 10.2 Exculpation.

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

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

SECTION 10.3 Fiduciary Duty.

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

(b) Unless otherwise expressly provided herein:

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

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

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

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

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

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

SECTION 10.4 Indemnification.

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

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

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

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

(v) Expenses (including attorneys' fees) incurred by a Company Indemnified Person in defending a civil, criminal, administrative or investigative action, suit or proceeding referred to in paragraphs (i) and (ii) of this Section 10.4(a) shall be paid by the Notes Issuer in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf

of such Company Indemnified Person to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Notes Issuer as authorized in this Section 10.4(a). Notwithstanding the foregoing, no advance shall be made by the Notes Issuer if a determination is reasonably and promptly made (i) by the Administrative Trustees by a majority vote of a quorum of disinterested Administrative Trustees, (ii) if such a quorum is not obtainable, or, even if obtainable, if a quorum of disinterested Administrative Trustees so directs, by independent legal counsel in a written opinion or (iii) the Common Security Holder of the Trust, that, based upon the facts known to the Administrative Trustees, counsel or the Common Security Holder at the time such determination is made, such Company Indemnified Person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the Trust, or, with respect to any criminal proceeding, that such Company Indemnified Person believed or had reasonable cause to believe his conduct was unlawful. In no event shall any advance be made in instances where the Administrative Trustees, independent legal counsel or Common Security Holder reasonably determine that such person deliberately breached his duty to the Trust or its Common or Capital Security Holders.

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

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

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

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

(b) The Notes Issuer agrees to indemnify the (i) Institutional Trustee, (ii) the Delaware Trustee, (iii) any Affiliate of the Institutional Trustee and the Delaware Trustee, and (iv) any officers, directors, shareholders, members, partners, employees, representatives, custodians, nominees or agents of the Institutional Trustee and the Delaware Trustee (each of the Persons in (i) through (iv) being referred

to as a “Fiduciary Indemnified Person”) for, and to hold each Fiduciary Indemnified Person harmless against, any loss, liability, claim, damage or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration or the trust or trusts hereunder, including the costs and expenses (including reasonable legal fees and expenses) of defending itself against or investigating any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. The obligation to indemnify as set forth in this Section 10.4(b) shall survive the resignation or removal of the Institutional Trustee or the Delaware Trustee, as the case may be, and the satisfaction and discharge of this Declaration.

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

ARTICLE XI

ACCOUNTING

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

SECTION 11.2 Certain Accounting Matters.

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

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

(c) The Administrative Trustees shall cause to be duly prepared and delivered to each of the Holders of Securities, any annual United States federal income tax information statement required by the Code, containing such information with regard to the Securities held by each Holder as is required by the

Code and the Treasury Regulations. Notwithstanding any right under the Code to deliver any such statement at a later date, the Administrative Trustees shall endeavor to deliver all such statements within 30 days after the end of each Fiscal Year of the Trust.

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

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

SECTION 11.4 Withholding. The Trust and the Administrative Trustees shall comply with all withholding requirements under United States federal, state and local law. The Trust shall request, and the Holders shall provide to the Trust, such forms or certificates as are necessary to establish an exemption from withholding with respect to each Holder, and any representations and forms as shall reasonably be requested by the Trust to assist it in determining the extent of, and in fulfilling, its withholding obligations. The Administrative Trustees shall file required forms with applicable jurisdictions and, unless an exemption from withholding is properly established by a Holder, shall remit amounts withheld with respect to the Holder to applicable jurisdictions. To the extent that the Trust is required to withhold and pay over any amounts to any authority with respect to distributions or allocations to any Holder, the amount withheld shall be deemed to be a distribution in the amount of the withholding to the Holder. In the event of any claimed overwithholding, Holders shall be limited to an action against the applicable jurisdiction. If the amount required to be withheld was not withheld from actual Distributions made, the Trust may reduce subsequent Distributions by the amount of such withholding.

ARTICLE XII

AMENDMENTS AND MEETINGS

SECTION 12.1 Amendments.

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

(i) the Administrative Trustees (or, if there are more than two Administrative Trustees, a majority of the Administrative Trustees);

(ii) if the amendment affects the rights, powers, duties, obligations or immunities of the Institutional Trustee, the Institutional Trustee; and

(iii) if the amendment affects the rights, powers, duties, obligations or immunities of the Delaware Trustee, the Delaware Trustee;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Meetings of the Holders of any class of Securities may be called at any time by the Administrative Trustees (or as provided in the terms of the Securities) to consider and act on any matter on which Holders of such class of Securities are entitled to act under the terms of this Declaration or the terms of the Securities. 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 Certificates held by the Holders of Securities exercising the right to call a meeting and only those Securities specified shall be counted for purposes of determining whether the required percentage set forth in the second sentence of this paragraph has been met.

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

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

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

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

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

ARTICLE XIII

REPRESENTATIONS OF INSTITUTIONAL TRUSTEE AND DELAWARE TRUSTEE

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

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

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

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

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

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

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

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

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

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

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

ARTICLE XIV

MISCELLANEOUS

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

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

Capital One Capital IV
1680 Capital One Drive
McLean, Virginia 22102
Attention: Administrative Trustees

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

The Bank of New York (Delaware)
White Clay Center
Route 273
Newark, Delaware 19711
Attention: Corporate Trust Administration

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

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

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

Capital One Financial Corporation
1680 Capital One Drive
McLean, Virginia 22102
Attention: Director of Capital Markets

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

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

SECTION 14.2 Governing Law. This Declaration and the Securities and the rights of the parties hereunder and thereunder shall be governed by and interpreted in accordance with the laws of the State of Delaware and all rights and remedies shall be governed by such laws without regard to principles of conflict of laws.

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

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

SECTION 14.5 Successors and Assigns. Whenever in this Declaration any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included, and all covenants and agreements in this Declaration by the Sponsor and the Trustees shall bind and inure to the benefit of their respective successors and assigns, whether or not so expressed.

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

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

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

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

By: /s/ Stephen Linehan
Name: Stephen Linehan
Title: Administrative Trustee

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

By: /s/ Kristine K. Gullo
Name: Kristine K. Gullo
Title: Vice President

THE BANK OF NEW YORK,
as Institutional Trustee

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

CAPITAL ONE FINANCIAL
CORPORATION, as Sponsor

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

ANNEX I

TERMS OF
6.745% CAPITAL SECURITIES
6.745% COMMON SECURITIES

Pursuant to Section 7.1 of the Amended and Restated Declaration of Trust, dated as of February 5, 2007 (as amended from time to time, the "Declaration"), the designation, rights, privileges, restrictions, preferences and other terms and provisions of the Capital Securities and the Common Securities are set out below (each capitalized term used but not defined herein has the meaning set forth in the Declaration or, if not defined in such Declaration, as defined in the Prospectus referred to below):

1. Designation and Number.

(a) Capital Securities. 500,000 Capital Securities of the Trust with an aggregate liquidation amount with respect to the assets of the Trust of five hundred million dollars ($500,000,000), and a liquidation amount with respect to the assets of the Trust of $1,000 per capital security, are hereby designated for the purposes of identification only as "6.745% Capital Securities" (the "Capital Securities"). The Capital Security Certificates evidencing the Capital Securities shall be substantially in the form of Exhibit A-1 to the Declaration, with such changes and additions thereto or deletions therefrom as may be required by ordinary usage, custom or practice or to conform to the rules of any stock exchange on which the Capital Securities are listed.

(b) Common Securities. 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 per common security, are hereby designated for the purposes of identification only as "6.745% Common Securities" (the "Common Securities"). The Common Security Certificates evidencing the Common Securities shall be substantially in the form of Exhibit A-2 to the Declaration, with such changes and additions thereto or deletions therefrom as may be required by ordinary usage, custom or practice.

2. Distributions.

(a) Distributions payable on each Security will be calculated (i) from and including February 5, 2007 to but excluding February 17, 2032 at the rate of 6.745% per annum, computed on the basis of a 360-day year comprised of twelve 30-day months, (ii) thereafter, at an annual rate equal to one-month LIBOR plus 1.17%, computed on the basis of a 360-day year and the actual number of days elapsed, and (iii) if any Securities remain outstanding after February 17, 2037 (the "Scheduled Maturity Date"), at an annual rate equal to one-month LIBOR plus 2.17%, computed on the basis of a 360-day year and the actual number of days elapsed (each, as applicable, the "Coupon Rate"), such rates being the rates of interest payable on the Notes to be held by the Institutional Trustee. Distributions in arrears beyond the first date such Distributions are payable (or would be payable, if not for any Deferral Period (as defined below) or default by the Notes Issuer on the Notes) will bear interest thereon compounded on each interest payment date at the applicable Coupon Rate (to the extent permitted by applicable law). The term "Distributions" as used herein includes such cash distributions and any such interest payable unless otherwise stated. A Distribution is payable only to the extent that payments are made in respect of the Notes held by the Institutional Trustee and to the extent the Institutional Trustee has funds available therefor.

(b) Distributions on the Securities will be payable (i) semi-annually in arrears on February 17 and August 17 of each year, commencing on August 17, 2007, through February 17, 2032 and (ii)

thereafter, on the 17th day of each calendar month. In the event any payment date on or before February 17, 2032 is not a Business Day, the Distributions payable on such date shall be paid on the following Business Day and no interest will accrue as a result of such postponement. In the event that any payment date after February 17, 2032 would otherwise fall on a day that is not a Business Day, that payment date will be postponed to the next day that is a Business Day. However, if the postponement would cause the date to fall in the next calendar month, the payment date will instead be brought forward to the immediately preceding Business Day. When, as and if available for payment, Distributions will be made by the Paying Agent, except as otherwise described below. The Notes Issuer has the right under the Indenture to defer payments of interest on the Notes by extending the interest payment period from time to time on the Notes for one or more consecutive periods that do not exceed 10 years (each a "Deferral Period"), during which Deferral Period no interest shall be due and payable on the Notes, provided that no Deferral Period may extend beyond the final repayment date of the Notes or earlier repayment or redemption in full of the Notes. As a consequence of the Notes Issuer's extension of the interest payment period, periodic Distributions will also be deferred. Despite such deferral, periodic Distributions will continue to accrue with interest thereon (to the extent permitted by applicable law) at the Coupon Rate compounded on each interest payment date during any such Deferral Period. In the event that the Notes Issuer is in default regarding its payment of any obligations under the Guarantee or the Notes Issuer has given notice of its election to extend the interest payment period but the Deferral Period has not yet commenced or a Deferral Period is continuing, then the Notes Issuer and its Subsidiaries shall not (a) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to any of the Notes Issuer's capital stock, (b) make any payment of principal of, or interest or premium, if any, on, or repay, repurchase or redeem any of its Parity Securities or any of its debt securities that rank junior to the Notes, or (c) make any guarantee payments on any guarantee by the Notes Issuer of the debt securities of any of its Subsidiaries if such guarantee ranks equally with or junior in interest to the Notes (other than (i) payments of dividends or distributions on any class of capital stock of the Notes Issuer payable in the same class of the parity stock of the Notes Issuer; (ii) payments under the Guarantee; (iii) any declaration of a dividend in connection with the implementation of a shareholders' rights plan, or the redemption or repurchase of any rights distributed pursuant to any such plan; (iv) purchases of common stock related to (x) the issuance of common stock or rights under any employee benefit plans for directors, officers, or employees of the Notes Issuer, (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 applicable Deferral Period; (v) payments of current interest in respect of debt securities that have the same rank upon a liquidation of the Notes Issuer as the Notes ("Parity Securities") that are made pro rata in respect of the amounts due on such Parity Securities and the Notes, and payments of deferred interest on Parity Securities that, if not made, would cause the Notes Issuer to breach the terms of the instrument governing such Parity Securities; provided that such payments are made in accordance with the Alternative Payment Mechanism, as described below and in the Prospectus, to the extent it applies; or (vi) payments of principal in respect of Parity Securities having an earlier Scheduled Maturity Date than the Notes, as required under a provision of any such Parity Securities that is substantially the same as Section 2.1(d) of the Third Supplemental Indenture, and payments in respect of Parity Securities having the same Scheduled Maturity Date as the terms of the Notes, as required by such a provision, and that are made on a pro rata basis among one or more series of such Parity Securities and the Notes. Prior to the termination of any such Deferral Period, the Notes Issuer may further extend such Deferral Period; provided that no Deferral Period may extend beyond the final repayment date of the Notes. Payments of deferred Distributions and accrued interest thereon will be payable to the Persons in whose names that Securities are registered at the close of business on the relevant record date with respect to the interest payment date (or such other date in accordance with Section 2.1(r) of the Third Supplemental Indenture) at the end of such Deferral Period. Upon the termination of any Deferral Period and the payment of all amounts then due without cancellation, the Notes Issuer may commence a new Deferral Period, subject to the above requirements. The Institutional Trustee will give notice to each Holder of any Deferral Period upon its receipt of notice thereof from the Notes Issuer.

(c) Subject to a Market Disruption Event, if the Notes Issuer defers interest on the Notes, it is required, commencing no later than (i) the first interest payment date on which the Notes Issuer pays current interest or (ii) the fifth anniversary of the commencement of the Deferral Period, to issue Qualifying Warrants and Qualifying Non-Cumulative Preferred Stock (the "Alternative Payment Mechanism") until the Notes Issuer has raised an amount of Eligible Proceeds (as defined below) at least equal to the aggregate amount of accrued and unpaid deferred interest, including Compounded Interest, on the Notes (such period, the "APM Period"); provided that the APM Period shall not commence until 10 Business Days following the date on which the Notes Issuer has provided notice to the Federal Reserve of the commencement of the APM Period and during such 10 Business Day period the Federal Reserve has not notified the Notes Issuer of its disapproval of the application of the Alternative Payment Mechanism. The Notes Issuer will notify the Federal Reserve (1) upon the commencement of any Deferral Period and (2) of the commencement of the APM Period, at least 10 Business Days prior to the commencement of such period. The Notes Issuer will be required to pay accrued and unpaid interest on the Notes on or prior to the next interest payment date using the net proceeds (after underwriters' or placement agents' fees, commissions or discounts and other expenses relating to the issuance or sale) received by the Notes Issuer during the six month period or monthly period, as applicable, prior to that interest payment date from the issuance or sale of Qualifying Warrants up to the Share Cap (as defined below) or Qualifying Non-Cumulative Preferred Stock up to the Preferred Stock Issuance Cap (as defined below) to Persons other than Subsidiaries of the Notes Issuer (such proceeds, "Eligible Proceeds"). Corresponding Distributions will be made on the Securities on a Pro Rata basis. Under the Alternative Payment Mechanism, the Notes Issuer shall not be required to issue Qualifying Non-Cumulative Preferred Stock to the extent that (i) with respect to deferred interest attributable to the first five years of any Deferral Period (including Compounded Interest thereon), the gross proceeds of any issuance of Qualifying Warrants applied during that deferral period to pay interest on the Notes pursuant to the Alternative Payment Mechanism, together with the gross proceeds of all prior issuances of Qualifying Warrants so applied during that deferral period, would exceed an amount equal to 2% of the product of the average of the current stock market prices of the Notes Issuer's common stock on the 10 consecutive trading days ending on the fourth trading day immediately preceding the date of issuance multiplied by the total number of issued and outstanding shares of the Notes Issuer's common stock as of the date of the Notes Issuer's then most recent publicly available consolidated financial statements (the "Warrant Issuance Cap") or (ii) the net proceeds of any issuance of Qualifying Non-Cumulative Preferred Stock applied during any deferral period to pay interest on the Notes pursuant to the Alternative Payment Mechanism, together with the net proceeds of all prior issuances of Qualifying Non-Cumulative Preferred stock so applied during any prior deferral period, would exceed 25% of the aggregate principal amount of the Notes initially issued under the Indenture (the "Preferred Stock Issuance Cap"). Once the Notes Issuer reaches the amount referred to in clause (i) of the preceding sentence for a deferral period, the Notes Issuer will not be required to issue more Qualifying Warrants under the Alternative Payment Mechanism with respect to deferred interest attributable to the first five years of that Deferral Period (including Compounded Interest thereon) even if the amount referred to in clause (i) subsequently increases because of a subsequent increase in the current stock market price of the Notes Issuer's common stock or the number of outstanding shares of the Notes Issuer's common stock. The Warrant Issuance Cap will cease to apply after the ninth anniversary of the commencement of any deferral period, at which point the Notes Issuer must pay any deferred interest, to the extent not disapproved by the Federal Reserve after notice, regardless of the time at which it was deferred, using the Alternative Payment Mechanism, subject to any Market Disruption Event. In addition, if the Warrant Issuance Cap is reached during a deferral period and the Notes Issuer subsequently repays all deferred interest, the Warrant Issuance Cap will cease to apply at the termination of that deferral period and will not apply again unless and until the Notes Issuer starts a new deferral period. The Share Cap, Warrant Issuance Cap and Preferred Stock Issuance Cap are calculated without regard to any Qualifying Warrants and Qualifying Non-Cumulative Preferred Stock that may be issued with respect to any other capital securities or junior subordinated debt securities.

The Notes Issuer may not issue Qualifying Warrants pursuant to the Alternative Payment Mechanism for purposes of paying deferred interest on the Notes to the extent that the total number of shares of common stock of the Notes Issuer underlying those Qualifying Warrants, together with all Qualifying Warrants previously issued pursuant to the Alternative Payment Mechanism, exceeds 50 million shares (subject to customary anti-dilution adjustments) (the "Share Cap"). The Share Cap will apply so long as the Notes remain outstanding, but the Notes Issuer must use commercially reasonable efforts to increase the Share Cap from time to time to a number of shares that would allow the Notes Issuer to satisfy its obligations with respect to the Alternative Payment Mechanism. The Notes Issuer also must use commercially reasonable efforts, subject to the Share Cap, to set the terms of the Qualifying Warrants so as to raise sufficient proceeds from their issuance to pay all deferred interest in accordance with the Alternative Payment Mechanism. Even if the Notes Issuer has not reached the Warrant Issuance Cap, it may not issue Qualifying Warrants pursuant to the Alternative Payment Mechanism after the Share Cap has been reached.

The Alternative Payment Mechanism shall not apply with respect to any interest payment date if the Notes Issuer shall have provided to the Indenture Trustee (and to the Institutional Trustee to the extent it is the holder of the Notes) no more than 15 and no less than 10 Business Days in advance of such interest payment date an Officers' Certificate stating that (i) a Market Disruption Event was existing after the immediately preceding interest payment date and (ii) either (a) the Market Disruption Event continued for the entire period from the Business Day immediately following the preceding interest payment date to the Business Day immediately preceding the date on which that certification is provided or (b) the Market Disruption Event continued for only part of this period, but the Notes Issuer was unable after commercially reasonable efforts to raise sufficient Eligible Proceeds during the rest of that period to pay all accrued and unpaid interest. The Notes Issuer will not be obligated to use commercially reasonable efforts to sell its common stock and apply the net proceeds of such sale to pay accrued and unpaid interest on the Notes for so long as a Market Disruption Event exists or is continuing. The Notes Issuer shall not be excused from its obligations under the Alternative Payment Mechanism if it determines not to pursue or complete the sale of Qualifying Warrants or Qualifying Non-Cumulative Preferred Stock due to pricing, dividend rate or dilution considerations.

(d) Distributions on the Securities will be payable to the Holders thereof as they appear on the books and records of the Trust at the close of business on the relevant record dates. While the Capital Securities remain in book-entry only form, the relevant record dates shall be one Business Day prior to the relevant payment dates which payment dates shall correspond to the interest payment dates on the Notes. Subject to any applicable laws and regulations and the provisions of the Declaration, each such payment in respect of the Capital Securities will be made as described under the heading "Description of the Capital Securities—Distributions" in the Prospectus dated January 29, 2007 (the "Prospectus"), of the Trust included in the Registration Statement on Form S-3 of the Sponsor, the Trust and certain other statutory trusts. The relevant record dates for the Common Securities shall be the same record date as for the Capital Securities. If the Capital Securities shall not continue to remain in book-entry only form, the relevant record dates for the Capital Securities shall be the first day of the month in which the relevant payment date occurs, which payment dates shall correspond to the interest payment dates on the Notes. Distributions payable on any Securities that are not punctually paid on any Distribution payment date, as a result of the Notes Issuer having failed to make a payment under the Notes, will cease to be payable to the Person in whose name such Securities are registered on the relevant record date, and such defaulted Distribution will instead be payable to the Person in whose name such Securities are registered on the special record date or other specified date determined in accordance with the Indenture. If any date on which Distributions are payable on the Securities is not a Business Day, then payment of the Distribution

payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay) except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date.

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

3. Liquidation Distribution Upon Dissolution.

(a) In the event of any voluntary or involuntary dissolution of the Trust, the Holders of the Securities on the date of the dissolution will be entitled to receive out of the assets of the Trust available for distribution to Holders of Securities after satisfaction of liabilities of creditors, distributions in an amount equal to the aggregate of the stated liquidation amount of $1,000 per Security plus accrued and unpaid Distributions thereon to the date of payment (such amount being the "Liquidation Distribution"), unless, in connection with such dissolution, Notes in an aggregate principal amount equal to the aggregate stated liquidation amount of, with an interest rate equal to the Coupon Rate, and bearing accrued and unpaid interest in an amount equal to the accrued and unpaid Distributions on, such Securities outstanding at such time, have been distributed on a Pro Rata basis to the Holders of the Securities in exchange for such Securities. Prior to any such Liquidation Distribution, the Notes Issuer will obtain any required regulatory approval.

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

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

4. Redemption and Distribution.

(a) Upon the repayment or redemption of the Notes in whole or in part, whether at, prior to, or after February 17, 2037 or pursuant to a Special Event as described below, the Institutional Trustee will use the proceeds of that repayment or redemption to redeem the total amount of Securities equal to the amount of Notes redeemed or repaid. The redemption price per security at maturity will equal the $1,000 liquidation amount, and the redemption price in the event of a redemption or repayment of Notes will equal the applicable redemption or repayment price attributed to $1,000 in principal amount of the Notes, in each case plus accumulated but unpaid Distributions to the date of payment (each, the "Redemption Price"). Holders shall be given not less than 30 nor more than 60 days' notice prior to the date of any redemption of Capital Securities relating to the redemption of the Notes and not less than 10 nor more than 15 Business Days' notice prior to the date of any redemption of Capital Securities relating to the repayment of the Notes. Prior to any such redemption, the Notes Issuer will obtain any required regulatory approval.

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

(c) The Notes Issuer shall have the right at any time, including on and after the Scheduled Maturity Date, to redeem some or all of the Notes at a redemption price equal to (1) 100% of the principal amount of the Notes being redeemed or (2) in the case of any redemption prior to February 17, 2032, if greater, the sum of the present values of the remaining scheduled payments of principal discounted from such date, and interest thereon that would have been payable to and including such date (not including any portion of such payments of interest accrued as of the date of redemption) discounted from such date 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 0.375%, in each case, plus accrued and unpaid interest to the redemption date.

(d) At any time within 90 days after a Tax Event or Rating Agency Event (each as defined below), the Notes Issuer will have the right to redeem all, but not less than all, of the Notes at a redemption price equal to: (1) 100% of the principal amount of the Notes then outstanding or (2) in the case of any redemption prior to February 17, 2032, if greater, the sum of the present values of the remaining scheduled payments of principal discounted from such date and interest thereon that would have been payable to and including such date (not including any portion of such payments of interest accrued as of the date of redemption) discounted from such date 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 0.500%, in each case, plus accrued and unpaid interest to the redemption date. In addition, at any time within 90 days after a Capital Treatment Event or Investment Company Event (each as defined below), the Notes Issuer will have the right to redeem all, but not less than all, of the Notes at a redemption price equal to their principal amount plus accrued and unpaid interest to the redemption date.

"Tax Event" means the Trust or the Notes Issuer has requested and received an opinion of counsel (which may be the Notes Issuer's counsel or counsel of an Affiliate but not an employee and which must be reasonably acceptable to the Institutional Trustee) experienced in tax matters to the effect that, as a result of any (i) 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 Capital Securities; (ii) proposed change in those laws or regulations that is announced after the initial issuance of the Capital Securities; (iii) official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying those laws or regulations that is announced after the initial issuance of the Capital Securities; or (iv) threatened challenge asserted in connection with an audit of the Notes Issuer, the Trust or a Subsidiary of the Notes Issuer, or a threatened challenge asserted in writing against any other taxpayer that has raised capital through the issuance of securities that are substantially similar to the Notes or the Capital Securities, there is more than an insubstantial risk that: (a) the Trust is, or will be, subject to United States federal income tax with respect to income received or accrued on the Notes; (b) interest payable by the Notes Issuer on the Notes is not, or will not be, deductible by the Notes Issuer, in whole or in part, for United States federal income tax purposes; or (c) the Trust is, or will be, subject to more than a de minimis amount of other taxes, duties or other governmental charges.

"Rating Agency Event" means a change in the methodology employed by any nationally recognized statistical rating organization within the meaning of Rule 15c3-1 under the Exchange Act, that

currently publishes a rating for the Notes Issuer (for purposes of this paragraph, a "rating agency") in assigning equity credit to securities such as the Notes, as such methodology is in effect on the date of the Prospectus (for purposes of this paragraph, the "current criteria"), which change results in a lower equity credit being assigned by such rating agency to the Notes as of the date of such change than the equity credit that would have been assigned to the Notes as of the date of such change by such rating agency pursuant to its current criteria.

"Capital Treatment Event" means the reasonable determination by the Notes Issuer that, as a result of any (i) 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 Capital Securities; (ii) proposed change in those laws or regulations that is announced after the initial issuance of the Capital Securities; or (iii) official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying those laws or regulations that is announced after the initial issuance of the Capital Securities; there is more than an insubstantial risk of impairment of the Notes Issuer's ability to treat the Capital Securities (or any substantial portion thereof) as "Tier 1 Capital" (or its equivalent) for purposes of the capital adequacy guidelines of the Federal Reserve.

"Investment Company Event" means the receipt by the Notes Issuer and the Trust of an opinion of counsel experienced in matters relating to investment companies to the effect that, as a result of any (i) change in law or regulation or (ii) change in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority, there is a more than insubstantial risk that the Trust is, or will be, considered an "investment company" that is required to be registered under the Investment Company Act, which change becomes effective on or after the date of the original issuance of the Capital Securities.

(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 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 Notes in exchange for the Securities (a "Redemption/Distribution Notice") will be given by the Trust by mail to each Holder of the Securities to be redeemed or exchanged not fewer than 30 nor more than 60 days, or not fewer than 10 nor more than 15 Business Days, as applicable, before the date fixed for redemption, repayment or exchange thereof which, in the case of a redemption or repayment, will be the date fixed for redemption or repayment of the Notes, as applicable. For purposes of the calculation of the date of redemption, repayment 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 or repaid, the Securities to be redeemed or repaid shall be redeemed or repaid Pro Rata from each Holder of Capital Securities, it being understood that, in respect of Capital Securities registered in the name of and held of record by DTC or its nominee (or any successor Clearing Agency or its

nominee), the distribution of the proceeds of such redemption or repayment 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 or repaid and the Trust gives a Redemption/Distribution Notice, which notice may only be issued if the Notes are redeemed or repaid as set out in this Section 4 (which notice will be irrevocable), then (A) while the Capital Securities are in book-entry only form, with respect to the Capital Securities, by 12:00 noon, New York City time, on the redemption date or the repayment date, as applicable, provided that the Notes Issuer has paid to the Institutional Trustee a sufficient amount of cash in connection with the related redemption, repayment or maturity of the Notes, the Institutional Trustee will deposit irrevocably with DTC or its nominee (or successor Clearing Agency or its nominee) funds sufficient to pay the applicable Redemption Price with respect to the Capital Securities and will give DTC (or any successor Clearing Agency) irrevocable instructions and authority to pay the Redemption Price to the Holders of the Capital Securities, and (B) with respect to Capital Securities issued in definitive form and Common Securities, provided that the Notes Issuer has paid the Institutional Trustee a sufficient amount of cash in connection with the related redemption, repayment or maturity of the Notes, the Paying Agent will pay the relevant Redemption Price to the Holders of such Securities, upon surrender thereof, by check mailed to the address of the relevant Holder appearing on the books and records of the Trust on the redemption date or repayment date, as applicable. 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 or the repayment date, as applicable, distributions will cease to accrue on the Securities so called for redemption or repayment and all rights of the Holders of such Securities so called for redemption or repayment will cease, except the right of the Holders of such Securities to receive the Redemption Price, 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 or repayment. 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 or repayment, as applicable. If payment of the Redemption Price in respect of any Securities is improperly withheld or refused and not paid by the Paying Agent or by the Sponsor as guarantor pursuant to the relevant Securities Guarantee, Distributions on such Securities will continue to accrue from the original redemption date or repayment date, as applicable, to the actual date of payment, in which case the actual payment date will be considered the date fixed for redemption or repayment for purposes of calculating the Redemption Price.

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

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

5. Voting Rights - Capital Securities.

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

(b) Subject to the requirements set forth in this paragraph, the Holders of a Majority in aggregate liquidation amount of the Capital Securities, voting separately as a class, may direct the time, method, and place of conducting any proceeding for any remedy available to the Institutional Trustee, or direct the exercise of any trust or power conferred upon the Institutional Trustee under the Declaration, including the right to direct the Institutional Trustee, as holder of the Notes, to (i) direct the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustee, or exercise any trust or power conferred on the Indenture Trustee with respect to the Notes, (ii) waive any past Indenture Event of Default that is waivable under Section 5.6 of the Indenture, (iii) exercise any right to rescind or annul a declaration that the principal of all the Notes shall be due and payable or (iv) consent to any amendment, modification or termination of the Indenture or the Notes where such consent shall be required; provided, however, that, where a consent or action under the Indenture would require the consent or act of each holder of each Note affected thereby, such consent or action under the Indenture shall not be effective until each Holder of Capital Securities shall have consented to such action or provided such consent. The Institutional Trustee shall not revoke any action previously authorized or approved by a vote of the Holders of the Capital Securities. If the Institutional Trustee fails to enforce its rights under the Notes, any Holder of Capital Securities may directly institute a legal proceeding against the Notes Issuer to enforce the Institutional Trustee's rights under the Notes without first instituting a legal proceeding against the Institutional Trustee or any other Person or entity. If a Trust Enforcement Event has occurred and is continuing and such event is attributable to the failure of the Notes Issuer to pay interest or principal on the Notes on the date such interest or principal is otherwise payable (or in the case of redemption, on the redemption date), then a holder of Capital Securities may also directly institute a proceeding for enforcement of payment to such holder (a "Direct Action") of the principal of or interest on the Notes having a principal amount equal to the aggregate liquidation amount of the Capital Securities of such holder on or after the respective due date specified in the Notes without first (i) directing the Institutional Trustee to enforce the terms of the Notes or (ii) instituting a legal proceeding directly against the Notes Issuer to enforce the Institutional Trustee's rights under the Notes; provided, however, that if a Trust Enforcement Event results from the failure to pay interest on the Notes during any Non-Acceleration Period, then a holder of Capital Securities may not institute a Direct Action for the payment of principal on the Notes, and the Institutional Trustee may not take any Legal Action for the payment of principal on the Notes, during such Non-Acceleration Period. Except as provided in the preceding sentence, the Holders of Capital Securities will not be able to exercise directly any other remedy available to the holders of the Notes. In connection with such Direct Action, the Notes Issuer will be subrogated to the rights of such Holder of Capital Securities under the Declaration to the extent of any payment made by the Notes Issuer to such holder of Capital Securities in such Direct Action.

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

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

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

6. Voting Rights - Common Securities.

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

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

(c) Subject to Section 2.6 of the Declaration and only after any Trust Enforcement Event with respect to the Capital Securities has been cured, waived, or otherwise eliminated and subject to the requirements of the second to last sentence of this paragraph, the Holders of a Majority in liquidation amount of the Common Securities, voting separately as a class, may direct the time, method, and place of conducting any proceeding for any remedy available to the Institutional Trustee, or direct the exercise of any trust or power conferred upon the Institutional Trustee under the Declaration, including (i) directing the time, method, place of conducting any proceeding for any remedy available to the Indenture Trustee, or exercising any trust or power conferred on the Indenture Trustee with respect to the Notes, (ii) waiving any past Indenture Event of Default that is waivable under Section 5.6 of the Indenture, or (iii) exercising any right to rescind or annul a declaration that the principal of all the Notes shall be due and payable, provided that, where a consent or action under the Indenture would require the consent or act of the Holders of greater than a majority in principal amount of Notes affected thereby (a "Super Majority"), the Institutional Trustee may only give such consent or take such action at the written direction of the Holders of at least the proportion in liquidation amount of the Common Securities which the relevant Super Majority represents of the aggregate principal amount of the Notes outstanding. Pursuant to this Section 6(c), the Institutional Trustee shall not revoke any action previously authorized or approved by a vote of the Holders of the Capital Securities. If the Institutional Trustee fails to enforce its rights under the Declaration, any Holder of Common Securities may institute a legal proceeding directly against any Person to enforce the Institutional Trustee's rights under the Declaration, without first instituting a legal proceeding against the Institutional Trustee or any other Person.

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

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

7. Amendments to Declaration and Indenture.

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

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

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

8. Pro Rata.

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

9. Ranking.

The Capital Securities rank pari passu and payment thereon shall be made Pro Rata with the Common Securities except that, where an Indenture Event of Default occurs and is continuing under the Indenture in respect of the Notes held by the Institutional Trustee, the rights of Holders of the Common Securities to payment in respect of Distributions and payments upon liquidation, redemption and otherwise are subordinated to the rights to payment of the Holders of the Capital Securities.

10. Acceptance of Securities Guarantee and Indenture.

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

11. No Preemptive Rights.

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

12. Miscellaneous.

These terms constitute a part of the Declaration.

The Sponsor will provide a copy of the Declaration or the Capital 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 CAPITAL SECURITY CERTIFICATE

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

UNLESS THIS CAPITAL SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY (55 WATER STREET, NEW YORK, NEW YORK) TO THE TRUST OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CAPITAL SECURITY ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY 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 Number | Number of Capital Securities

CUSIP NO. 140422AA4

Certificate Evidencing Capital Securities

of

CAPITAL ONE CAPITAL IV
6.745% Capital Securities
(Liquidation Amount $1,000 per Capital Security)

CAPITAL ONE CAPITAL IV, a statutory trust formed under the laws of the State of Delaware (the "Trust"), hereby certifies that __________ (the "Holder") is the registered owner of __________ (______) capital securities of the Trust representing undivided beneficial interests in the assets of the Trust designated the 6.745% Capital Securities (the "Capital Securities"). The Capital Securities are transferable on the books and records of the Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer. The designation, rights, privileges, restrictions, preferences and other terms and provisions of the Capital Securities are set forth in, and this certificate and the Capital Securities represented hereby are issued and shall in all respects be subject to, the provisions of the Amended and Restated Declaration of Trust of the Trust dated as of February 5, 2007, as the same may be amended from time to time (the "Declaration"), including the designation of the terms of the Capital Securities as set forth in Annex I thereto. Capitalized terms used herein but not defined shall have the meaning given them in the Declaration. The Holder is entitled to the benefits of the Capital Securities Guarantee to the extent provided therein. The Sponsor will provide a copy of the Declaration, the Capital Securities Guarantee and the Indenture to a Holder without charge upon written request to the Sponsor at its principal place of business.

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

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

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

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

IN WITNESS WHEREOF, the Trust has executed this certificate this 5th day of February, 2007.

____

Name:

Title: Administrative Trustee

ASSIGNMENT

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

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

(Insert address and zip code of assignee)

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

Date: ____
Signature: ____

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

EXHIBIT A-2

FORM OF COMMON SECURITY CERTIFICATE

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

Certificate Number Number of Common Securities

Certificate Evidencing Common Securities

of

CAPITAL ONE CAPITAL IV

6.745% Common Securities
(Liquidation Amount $1,000 per Common Security)

CAPITAL ONE CAPITAL IV, 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 6.745% Common Securities (the "Common Securities"). The Common Securities are transferable on the books and records of the Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer and satisfaction of the other conditions set forth in the Declaration (as defined below), including, without limitation, Section 9.1 thereof. The designation, rights, privileges, restrictions, preferences and other terms and provisions of the Common Securities represented hereby are issued and shall in all respects be subject to the provisions of the Amended and Restated Declaration of Trust of the Trust dated as of February 5, 2007, as the same may be amended from time to time (the "Declaration"), including the designation of the terms of the Common Securities as set forth in Annex I thereto. Capitalized terms used herein but not defined shall have the meaning given them in the Declaration. The Sponsor will provide a copy of the Declaration and the Indenture to a Holder without charge upon written request to the Sponsor at its principal place of business.

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

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

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

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

IN WITNESS WHEREOF, the Trust has executed this certificate this __ day of ______,

____

Name:
Title: Administrative Trustee

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 NOTE

EXHIBIT C

UNDERWRITING AGREEMENT

Exhibit 4.4

EXECUTION VERSION

GUARANTEE AGREEMENT

Dated as of February 5, 2007

By and Between

CAPITAL ONE FINANCIAL CORPORATION,
as Guarantor

and

THE BANK OF NEW YORK,
as Trustee

CROSS REFERENCE TABLE[1]

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

[1] *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.*

INDEX OF TERMS

	Page
Affiliate	2
Alternative Payment Mechanism	2
Business Day	2
Capital Securities	2
Common Securities	2
Common Stock	2
Corporate Trust Office	2
Declaration of Trust	2
Existing Parity Obligations	2
Global Security	3
Guarantee	1
Guarantee Event of Default	3
Guarantee Payments	3
Guarantee Trustee	3
Guarantor	1
Holder	3
Indenture	3
List of Holders	3
Majority in Liquidation Amount	3
Notes	4
Officers’ Certificate	4
Parity Securities	4
Person	4
Redemption Price	4
Responsible Officer	4
Second Supplemental Indenture	5
Securities	5
Successor Guarantee Trustee	5
Trust	1

TABLE OF CONTENTS
(continued)

		Page
Trust Enforcement Event		5
Trust Indenture Act		5

ARTICLE I
INTERPRETATION AND DEFINITIONS

SECTION 1.1	INTERPRETATION AND DEFINITIONS	1

ARTICLE II
TRUST INDENTURE ACT

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	5
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	6
SECTION 2.9	DISCLOSURE OF INFORMATION	6
SECTION 2.10	GUARANTEE TRUSTEE MAY FILE PROOFS OF CLAIM	7

ARTICLE III
POWERS, DUTIES AND RIGHTS OF GUARANTEE TRUSTEE

SECTION 3.1	POWERS AND DUTIES OF GUARANTEE TRUSTEE	7
SECTION 3.2	CERTAIN RIGHTS OF GUARANTEE TRUSTEE	8

ARTICLE IV
GUARANTEE TRUSTEE

SECTION 4.1	GUARANTEE TRUSTEE; ELIGIBILITY	10
SECTION 4.2	APPOINTMENT, REMOVAL AND RESIGNATION OF GUARANTEE TRUSTEE	11

ARTICLE V
GUARANTEE

SECTION 5.1	GUARANTEE	12

TABLE OF CONTENTS
(continued)

		Page
SECTION 5.2	WAIVER OF NOTICE AND DEMAND	12
SECTION 5.3	OBLIGATIONS NOT AFFECTED	12
SECTION 5.4	RIGHTS OF HOLDERS	13
SECTION 5.5	GUARANTEE OF PAYMENT	13
SECTION 5.6	SUBROGATION	14
SECTION 5.7	INDEPENDENT OBLIGATIONS	14

ARTICLE VI
LIMITATION OF TRANSACTIONS; SUBORDINATION

SECTION 6.1	LIMITATION OF TRANSACTIONS	14
SECTION 6.2	RANKING	15
SECTION 6.3	SUBORDINATION OF COMMON SECURITIES	15

ARTICLE VII
TERMINATION

SECTION 7.1	TERMINATION	15

ARTICLE VIII
INDEMNIFICATION

SECTION 8.1	INDEMNIFICATION	15

ARTICLE IX
MISCELLANEOUS

SECTION 9.1	SUCCESSORS AND ASSIGNS	16
SECTION 9.2	AMENDMENTS	16
SECTION 9.3	NOTICES	16
SECTION 9.4	BENEFIT	17
SECTION 9.5	GOVERNING LAW	17

GUARANTEE AGREEMENT

This GUARANTEE AGREEMENT (the “Guarantee“), dated as of February 5, 2007, is executed and delivered by CAPITAL ONE FINANCIAL CORPORATION, a Delaware corporation (the “Guarantor“), and THE BANK OF NEW YORK, a corporation duly existing under the laws of the State of New York, as trustee (the “Guarantee Trustee”), for the benefit of the Holders (as defined herein) from time to time of the Securities (as defined herein) of CAPITAL ONE CAPITAL IV, a Delaware statutory trust (the “Trust“).

RECITALS

WHEREAS, pursuant to the Declaration of Trust (as defined herein), the Trust may issue up to $500,000,000 aggregate liquidation amount of capital securities, having a liquidation amount of $1,000.00 per security and designated the “6.745% Trust Preferred Securities” of the Trust (together with the further capital securities that the Trust may issue pursuant to the Declaration of Trust, the “Capital Securities”) and $10,000 aggregate liquidation amount of common securities, having a liquidation amount of $1,000.00 per security and designated the “6.745% 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 Capital Securities, the “Securities”);

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

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

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

ARTICLE I

INTERPRETATION AND DEFINITIONS

SECTION 1.1 INTERPRETATION AND DEFINITIONS.

In this Guarantee, unless the context otherwise requires:

(a) capitalized terms used in this Guarantee but not defined in the preamble above have the respective meanings assigned to them in this Section 1.1;

(b) a term defined anywhere in this Guarantee has the same meaning throughout;

(c) all references to "the Guarantee" or "this Guarantee" are to this Guarantee as modified, supplemented or amended from time to time;

(d) all references in this Guarantee to Articles, Sections and Recitals are to Articles, Sections and Recitals of this Guarantee, unless otherwise specified;

(e) unless otherwise defined in this Guarantee, a term defined in the Trust Indenture Act has the same meaning when used in this Guarantee;

(f) a reference to the singular includes the plural and vice versa and a reference to any masculine form of a term shall include the feminine form of a term, as applicable; and

(g) the following terms have the following meanings:

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

"Alternative Payment Mechanism" has the meaning specified in the Indenture.

"Business Day" has the meaning specified in the Declaration of Trust.

"Capital Securities" has the meaning specified in the Recitals hereto.

"Common Securities" has the meaning specified in the Recitals hereto.

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

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

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

"Existing Parity Obligations" means (x) the Guarantor's 7.50% junior subordinated debt securities due June 15, 2066 issued in connection with the June 2006 offering of 7.50% capital securities of Capital One Capital II and the Guarantor's guarantee of these capital securities; and (y) the Guarantor's 7.686% junior subordinated debt securities due August 1, 2066 issued in connection with the July 2006 offering of 7.686% capital securities of Capital One Capital III and the Guarantor's guarantee of these capital securities.

"Global Security" means a fully registered, global Capital Security, as defined in the Indenture, representing the Capital Securities.

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

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

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

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

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

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

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

"Notes" means the series of 6.745% Capital Efficient Notes due 2082 designated the "6.745% Capital Efficient Notes due 2082", held by the Institutional Trustee as defined in the Declaration of Trust.

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

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

(ii) a brief statement of the nature and scope of the examination or investigation undertaken by each officer on behalf of such Person in rendering the Officers' Certificate;

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

(iv) a statement as to whether, in the opinion of each such officer acting on behalf of such Person, such condition or covenant has been complied with.

"Parity Securities" means the Existing Parity Obligations and debt securities issued by the Company after the date hereof that have the same rank upon liquidation of the Company as the Notes.

"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.

"Third Supplemental Indenture" means the Third Supplemental Indenture, dated as of February 5, 2007, between Capital One Financial Corporation and the Indenture Trustee.

“Trust Enforcement Event“ in respect of the Securities means an Event of Default (as defined in the Indenture) has occurred and is continuing in respect of the Notes.

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

ARTICLE II

TRUST INDENTURE ACT

SECTION 2.1 TRUST INDENTURE ACT; APPLICATION.

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

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

SECTION 2.3 REPORTS BY GUARANTEE TRUSTEE.

Within 60 days after June 6 of each year (commencing with the year of the first anniversary of the issuance of the Securities), the Guarantee Trustee shall provide to the Holders of the Securities such reports as are required by Section 313 of the Trust Indenture Act (if any) in the form and in the manner provided by Section 313 of the Trust Indenture Act. The Guarantee Trustee shall also comply with the requirements of Section 313(d) of the Trust Indenture Act.

SECTION 2.4 PERIODIC REPORTS TO GUARANTEE TRUSTEE.

The Guarantor shall provide to the Guarantee Trustee such documents, reports and information as required by Section 314(a) (if any) of the Trust Indenture Act and the compliance certificate required by Section 314(a) of the Trust Indenture Act in the form, in the manner and at the times required by Section 314(a) of the Trust Indenture Act, but in no event later than 120 days after the end of each calendar year.

SECTION 2.5 EVIDENCE OF COMPLIANCE WITH CONDITIONS PRECEDENT.

The Guarantor shall provide to the Guarantee Trustee such evidence of compliance with any conditions precedent, if any, provided for in this Guarantee that relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given by an officer pursuant to Section 314(c)(1) may be given in the form of an Officers' Certificate.

SECTION 2.6 GUARANTEE EVENT OF DEFAULT; WAIVER.

The Holders of a Majority in Liquidation Amount of the Capital Securities may, by vote or written consent, on behalf of the Holders of all of the Securities, waive any past Guarantee Event of Default and its consequences. Upon such waiver, any such Guarantee Event of Default shall cease to exist, and any Guarantee Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Guarantee, but no such waiver shall extend to any subsequent or other default or Guarantee Event of Default or impair any right consequent thereon.

SECTION 2.7 GUARANTEE EVENT OF DEFAULT; NOTICE.

(a) The Guarantee Trustee shall, within 90 days after the occurrence of a Guarantee Event of Default actually known to a Responsible Officer of the Guarantee Trustee, transmit by mail, first class postage prepaid, to the Holders of the Securities, notices of all such Guarantee Events of Default, unless such defaults have been cured before the giving of such notice; *provided* that the Guarantee Trustee shall be protected in withholding such notice if and so long as a Responsible Officer of the Guarantee Trustee in good faith determines that the withholding of such notice is in the interests of the Holders of the Securities.

(b) The Guarantee Trustee shall not be deemed to have knowledge of any Guarantee Event of Default unless the Guarantee Trustee shall have received written notice thereof or a Responsible Officer of the Guarantee Trustee charged with the administration of this Guarantee Agreement shall have obtained actual knowledge thereof.

SECTION 2.8 CONFLICTING INTERESTS.

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

SECTION 2.9 DISCLOSURE OF INFORMATION.

The disclosure of information as to the names and addresses of the Holders of the Securities in accordance with Section 312 of the Trust Indenture Act, regardless of the source from which such information was derived, shall not be deemed to be a violation of any existing law, or any law hereafter enacted which does not specifically refer to Section 312 of the Trust Indenture Act, nor shall the Guarantee Trustee be held accountable by reason of mailing any material pursuant to a request made under Section 312(b) of the Trust Indenture Act.

SECTION 2.10 GUARANTEE TRUSTEE MAY FILE PROOFS OF CLAIM.

Upon the occurrence of a Guarantee Event of Default, the Guarantee Trustee is hereby authorized to (a) recover judgment, in its own name and as trustee of an express trust, against the Guarantor for the whole amount of any Guarantee Payments remaining unpaid and (b) file such proofs of claim and other papers or documents as may be necessary or advisable in order to have its claims and those of the Holders of the Securities allowed in any judicial proceedings relative to the Guarantor, its creditors or its property.

ARTICLE III

POWERS, DUTIES AND RIGHTS OF
GUARANTEE TRUSTEE

SECTION 3.1 POWERS AND DUTIES OF GUARANTEE TRUSTEE.

(a) This Guarantee shall be held by the Guarantee Trustee on behalf of the Trust for the benefit of the Holders of the Securities, and the Guarantee Trustee shall not transfer 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; and

(x) Whenever in the administration of this Guarantee, the Guarantee Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder, the Guarantee Trustee (i) may request written instructions from the Holders of a Majority in Liquidation Amount of the Securities, (ii) may refrain from enforcing such remedy or right or taking such other action until such written instructions are received and (iii) shall be protected in conclusively relying on or acting in accordance with such written instructions.

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

ARTICLE IV

GUARANTEE TRUSTEE

SECTION 4.1 GUARANTEE TRUSTEE; ELIGIBILITY.

(a) There shall 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 Notes pursuant to the terms thereof and the Guarantor shall not be obligated hereunder to make any Guarantee Payments during any Deferral Period or APM Period (as defined in the Indenture) with respect to the Distributions (as defined in the Declaration of Trust) on the Securities.

SECTION 5.2 WAIVER OF NOTICE AND DEMAND.

The Guarantor hereby waives notice of acceptance of this Guarantee and of any liability to which it applies or may apply, presentment, demand for payment, any right to require a proceeding first against the Trust or any other Person before proceeding against the Guarantor, protest, notice of nonpayment, notice of dishonor, notice of redemption and all other notices and demands.

SECTION 5.3 OBLIGATIONS NOT AFFECTED.

The obligations, covenants, agreements and duties of the Guarantor under this Guarantee shall be absolute and unconditional and shall remain in full force and effect until the entire liquidation amount of all outstanding Securities shall have been paid and such obligation shall in no way be affected or impaired by reason of the happening from time to time of any event, including, without limitation, the following, whether or not with notice to, or the consent of, the Guarantor:

(a) The release or waiver, by operation of law or otherwise, of the performance or observance by the Trust of any express or implied agreement, covenant, term or condition relating to the Securities to be performed or observed by the Trust;

(b) The extension of time for the payment by the Trust of all or any portion of the Distributions, Redemption Price, Liquidation Distribution or any other sums payable under the terms of the Securities or the extension of time for the performance of any other obligation under, arising out of, or in connection with the Securities (other than an extension of time for payment of Distributions, Redemption Price, Liquidation Distribution or other sum payable that results from the extension of any interest payment period on the Notes);

(c) Any failure, omission, delay or lack of diligence on the part of the Institutional Trustee or the Holders to enforce, assert or exercise any right, privilege, power or remedy conferred on the Institutional Trustee or the Holders pursuant to the terms of the Securities, or any action on the part of the Trust granting indulgence or extension of any kind;

(d) The voluntary or involuntary liquidation, dissolution, sale of any collateral, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of debt of, or other similar proceedings affecting, the Trust or any of the assets of the Trust;

(e) Any invalidity of, or defect or deficiency in, the Securities;

(f) The settlement or compromise of any obligation guaranteed hereby or hereby incurred; or

(g) Any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor, it being the intent of this Section 5.3 that the obligations of the Guarantor hereunder shall be absolute and unconditional under any and all circumstances.

There shall be no obligation of the Guarantee Trustee or the Holders to give notice to, or obtain consent of, the Guarantor or any other Person with respect to the happening of any of the foregoing.

No setoff, counterclaim, reduction or diminution of any obligation, or any defense of any kind or nature that the Guarantor has or may have against any Holder shall be available hereunder to the Guarantor against such Holder to reduce the payments to it under this Guarantee.

SECTION 5.4 RIGHTS OF HOLDERS.

(a) The Holders of at least a Majority in Liquidation Amount of the Securities have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Guarantee Trustee in respect of this Guarantee or to direct the exercise of any trust or power conferred upon the Guarantee Trustee under this Guarantee.

(b) If the Guarantee Trustee fails to enforce this Guarantee, then any Holder of Securities may, subject to the subordination provisions of Section 6.2, institute a legal proceeding directly against the Guarantor to enforce the Guarantee Trustee's rights under this Guarantee without first instituting a legal proceeding against the Trust, the Guarantee Trustee or any other person or entity. In addition, if the Guarantor has failed to make a Guarantee Payment, a Holder of Securities may, subject to the subordination provisions of Section 6.2, directly institute a proceeding against the Guarantor for enforcement of the Guarantee for such payment to the Holder of the Securities of the principal of or interest on the Notes on or after the respective due dates specified in the Notes, and the amount of the payment will be based on the Holder's *pro rata* share of the amount due and owing on all of the Securities. The Guarantor hereby waives any right or remedy to require that any action on this Guarantee be brought first against the Trust or any other person or entity before proceeding directly against the Guarantor.

SECTION 5.5 GUARANTEE OF PAYMENT.

This Guarantee creates a guarantee of payment and not of collection.

SECTION 5.6 SUBROGATION.

The Guarantor shall be subrogated to all (if any) rights of the Holders of Securities against the Trust in respect of any amounts paid to such Holders by the Guarantor under this Guarantee; *provided, however,* that the Guarantor shall not (except to the extent required by mandatory provisions of law) be entitled to enforce or exercise any right that it may acquire by way of subrogation or any indemnity, reimbursement or other agreement, in all cases as a result of payment under this Guarantee, if at the time of any such payment, any amounts are due and unpaid under this Guarantee. If any amount shall be paid to the Guarantor in violation of the preceding sentence, the Guarantor agrees to hold such amount in trust for the Holders and to pay over such amount to the Guarantee Trustee for the benefit of the Holders.

SECTION 5.7 INDEPENDENT OBLIGATIONS.

The Guarantor acknowledges that its obligations hereunder are independent of the obligations of the Trust with respect to the Securities, and that the Guarantor shall be liable as principal and as debtor hereunder to make Guarantee Payments pursuant to the terms of this Guarantee notwithstanding the occurrence of any event referred to in subsections 5.3(a) through 5.3(g), inclusive, hereof.

ARTICLE VI

LIMITATION OF TRANSACTIONS; SUBORDINATION

SECTION 6.1 LIMITATION OF TRANSACTIONS.

So long as any Securities remain outstanding, (i) if there shall have occurred an Event of Default (as defined in the Indenture) with respect to the Notes, (ii) if there shall have occurred a Guarantee Event of Default or (iii) during any Deferral Period or APM 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 Notes 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 Notes (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 deferral period,
(e) payments of current interest in respect of

Parity Securities that are made pro rata in respect of the amounts due on such Parity Securities and the Notes, and payments of deferred interest on Parity Securities that, if not made, would cause the Guarantor to breach the terms of the instrument governing such Parity Securities); *provided* that such payments are made in accordance with the Alternative Payment Mechanism, as described in the Indenture and in the Prospectus dated January 29, 2007, to the extent it applies, and (f) payments of principal in respect of Parity Securities having an earlier Scheduled Maturity Date than the Notes, as required under a provision of any such Parity Securities that is substantially the same as Section 2.1(d)(viii) of the Third Supplemental Indenture with respect to the payments on Parity Securities, and payments in respect of Parity Securities having the same Scheduled Maturity Date as the Notes, as required by such a provision, and that are made on a pro rata basis among one or more series of such Parity Securities having such a provision and the Notes.

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(q) of the Third Supplemental Indenture) of the Guarantor in the same manner and to the same extent as set forth in Article XIV of the Indenture.

SECTION 6.3 SUBORDINATION OF COMMON SECURITIES.

If a Trust Enforcement Event has occurred and is continuing under the Declaration of Trust, the rights of the Holders of the Common Securities to receive Guarantee Payments hereunder shall be subordinated to the rights of the Holders of the Capital Securities to receive Guarantee Payments under this Guarantee.

ARTICLE VII

TERMINATION

SECTION 7.1 TERMINATION.

This Guarantee shall terminate upon (i) full payment of the Redemption Price of all Securities, (ii) distribution of the Notes to the Holders of all the Securities or (iii) full payment of the amounts payable in accordance with the Declaration of Trust upon liquidation of the Trust. Notwithstanding the foregoing, this Guarantee will continue to be effective or will be reinstated, as the case may be, if at any time any Holder of Securities must restore payment of any sums paid under the Securities or under this Guarantee.

ARTICLE VIII

INDEMNIFICATION

SECTION 8.1 INDEMNIFICATION.

The Guarantor agrees to indemnify each Note Issuer Indemnified Person, the Institutional Trustee and the Delaware Trustee (as each such term is defined in the Declaration of Trust) for,

and to hold each such Person harmless against any loss, claim, damage, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the reasonable costs and expenses of defending itself against, or investigating, any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. The provisions of this Section 8.1 shall survive the termination of this Guarantee or the resignation or removal of the Guarantee Trustee.

ARTICLE IX

MISCELLANEOUS

SECTION 9.1 SUCCESSORS AND ASSIGNS.

All guarantees and agreements contained in this Guarantee shall bind the successors, assigns, receivers, trustees and representatives of the Guarantor and shall inure to the benefit of the Holders of the Securities then outstanding. Except in connection with a consolidation, merger or sale involving the Guarantor that is permitted under Article VIII of the Indenture and pursuant to which the successor or assignee agrees in writing to perform the Guarantor’s obligations hereunder, the Guarantor shall not assign its obligations hereunder.

SECTION 9.2 AMENDMENTS.

Except with respect to any changes that do not materially adversely affect the rights of the Holders (in which case no consent of the Holders will be required), this Guarantee may not be amended without the prior approval of the Holders of not less than a Majority in Liquidation Amount of the Securities. The provisions of Section 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
2 North LaSalle Street, Suite 1020
Chicago, Illinois 60602
Facsimile No.: (312) 827-8542
Attention: Corporate Trust Administration

(b) If given to the Guarantor, at the Guarantor's mailing addresses set forth below (or such other address as the Guarantor may give notice of to the Guarantee Trustee and the Holders of the Securities):

Capital One Financial Corporation
1680 Capital One Drive
McLean, Virginia 22102
Facsimile No.: (703) 720-2165
Attention: Director of Capital Markets

(c) If given to any Holder of Securities, at the address set forth on the books and records of the Trust.

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

SECTION 9.4 BENEFIT.

This Guarantee is solely for the benefit of the Holders of the Securities and, subject to Section 3.1(a), is not separately transferable from the Securities.

SECTION 9.5 GOVERNING LAW.

THIS GUARANTEE SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK.

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

IN WITNESS WHEREOF, this Guarantee is executed as of the day and year first above written.

CAPITAL ONE FINANCIAL CORPORATION,
as Guarantor

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

THE BANK OF NEW YORK,
as Guarantee Trustee

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

Exhibit 8.1

[Sullivan & Cromwell Letterhead]

February 5, 2007

Capital One Financial Corporation
1680 Capital One Drive
McLean, VA 22102

Ladies and Gentlemen:

As special tax counsel to Capital One Financial Corporation and Capital One Capital IV in connection with the issuance of 6.745% Capital Securities, as described in the prospectus supplement, dated January 29, 2007, (the "Prospectus Supplement"), we hereby confirm to you our opinion as set forth under the heading "Certain United States Federal Income Tax Consequences" in the Prospectus Supplement, subject to the limitations set forth therein.

We hereby consent to the filing of this opinion as an exhibit to the Prospectus Supplement and to the reference to us under the heading "Certain Federal Income Tax Consequences" in the Prospectus Supplement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act of 1933.

Very truly yours,

/s/ Sullivan & Cromwell, LLP

SULLIVAN & CROMWELL LLP

EXHIBIT 99.1

Execution Copy

Replacement Capital Covenant, dated as of February 5, 2007 (this "*Replacement Capital Covenant*"), by Capital One Financial Corporation, a Delaware corporation (together with its successors and assigns, the "*Corporation*"), in favor of and for the benefit of each Covered Debtholder (as defined below).

Recitals

A. On the date hereof, the Corporation is issuing $500,010,000 aggregate principal amount of its 6.745% Capital Efficient Notes due 2082 (the "*CENts*") to Capital One Capital IV (the "*Trust*").

B. On the date hereof, the Trust is issuing $500,010,000 aggregate liquidation amount of its 6.745% Capital Securities (the "*Capital Securities*" and together with the CENts, the "*Securities*").

C. This Replacement Capital Covenant is the "*Replacement Capital Covenant*" referred to in the Prospectus Supplement, dated January 29, 2007, relating to the Capital Securities (together with the accompanying Prospectus, dated May 9, 2006, the "*Prospectus Supplement*").

D. The Corporation is entering into and disclosing the content of this Replacement Capital Covenant in the manner provided below with the intent that the covenants provided for in this Replacement Capital Covenant be enforceable by each Covered Debtholder and that the Corporation be estopped from disregarding the covenants in this Replacement Capital Covenant, in each case to the fullest extent permitted by applicable law.

E. The Corporation acknowledges that reliance by each Covered Debtholder upon the covenants in this Replacement Capital Covenant is reasonable and foreseeable by the Corporation and that, were the Corporation to disregard its covenants in this Replacement Capital Covenant, each Covered Debtholder would have sustained an injury as a result of its reliance on such covenants.

NOW, THEREFORE, the Corporation hereby covenants and agrees as follows in favor of and for the benefit of each Covered Debtholder.

SECTION 1. *Definitions*. Capitalized terms used in this Replacement Capital Covenant (including the Recitals) have the meanings set forth in Schedule I hereto.

SECTION 2. *Limitations on Redemption and Purchase of Securities*. The Corporation hereby promises and covenants to and for the benefit of each Covered Debtholder that the Corporation shall not repay, redeem or purchase, and shall cause its Subsidiaries not to purchase, all or any part of the Securities on or before February 5, 2062 except to the extent that (a) in the case of a redemption or purchase, the Corporation has obtained the prior approval of the Federal Reserve if such approval is then required under the Federal Reserve's capital guidelines applicable to bank holding companies and (b) the principal amount repaid or the applicable redemption or purchase price does not exceed the sum of the following amounts:

(i) the Applicable Percentage of (a) the aggregate amount of the net cash proceeds the Corporation and its Subsidiaries have received from the sale of Common Stock and rights to acquire Common Stock to Persons other than the Corporation and its Subsidiaries and (b) the Market Value of any Common Stock that the Corporation and its Subsidiaries have issued to persons other than the Corporation and its Subsidiaries in connection with the conversion of any convertible or exchangeable securities, other than securities for which the Corporation or any of its Subsidiaries has received equity credit from any NRSRO, in each case within a Measurement Period (without double counting proceeds received in any prior Measurement Period); plus

(ii) 100% of the aggregate amount of net cash proceeds the Corporation and its Subsidiaries have received within a Measurement Period (without double counting proceeds received in any prior Measurement Period) from the sale of Mandatorily Convertible Preferred Stock and Debt Exchangeable for Equity to Persons other than the Corporation and its Subsidiaries; plus

(iii) 100% of the aggregate amount of net cash proceeds the Corporation and its Subsidiaries have received within a Measurement Period (without double counting proceeds received in any prior Measurement Period) from the sale of Qualifying Capital Securities to Persons other than the Corporation and its Subsidiaries.

SECTION 3. *Covered Debt*. (a) The Corporation represents and warrants that the Initial Covered Debt is Eligible Debt.

(b) On or during the 30-day period immediately preceding any Redesignation Date with respect to the Covered Debt then in effect, the Corporation shall identify the series of Eligible Debt that will become the Covered Debt on and after such Redesignation Date in accordance with the following procedures:

(i) the Corporation shall identify each series of its and its Depository Institution Subsidiaries' then outstanding long-term indebtedness for money borrowed that is Eligible Debt;

(ii) if only one series of the Corporation's then outstanding long-term indebtedness for money borrowed is Eligible Debt, such series shall become the Covered Debt commencing on the related Redesignation Date;

(iii) if the Corporation has more than one outstanding series of long-term indebtedness for money borrowed that is Eligible Debt, then the Corporation shall identify the series that has the latest occurring final maturity date as of the date the Corporation is applying the procedures in this Section 3(b) and such series shall become the Covered Debt on the related Redesignation Date;

(iv) if the Corporation has no outstanding series of long-term indebtedness for money borrowed that is Eligible Debt, and its Largest Depository Institution Subsidiary has only one outstanding series of long-term indebtedness for money borrowed that is Eligible Debt, such series shall become the Covered Debt commencing on the related Redesignation Date;

(v) if the Corporation has no outstanding series of long-term indebtedness for money borrowed that is Eligible Debt, but its Largest Depository Institution Subsidiary has more than one outstanding series of long-term indebtedness for money borrowed that is Eligible Debt, then the Corporation shall identify the series that has the latest occurring final maturity date as of the date the Corporation is applying the procedures in this Section 3(b) and such series shall become the Covered Debt on the related Redesignation Date;

(vi) the series of outstanding long-term indebtedness for money borrowed that is determined to be Covered Debt pursuant to clause (ii), (iii), (iv) or (v) above shall be the

Covered Debt for purposes of this Replacement Capital Covenant for the period commencing on the related Redesignation Date and continuing to but not including the Redesignation Date as of which a new series of outstanding long-term indebtedness is next determined to be the Covered Debt pursuant to the procedures set forth in this Section 3(b); and

(vii) in connection with such identification of a new series of Covered Debt, the Corporation shall give the notice provided for in Section 3(c) within the time frame provided for in such section.

(c) *Notice*. In order to give effect to the intent of the Corporation described in Recital D, the Corporation covenants that (i) simultaneously with the execution of this Replacement Capital Covenant or as soon as practicable after the date hereof, it shall (x) give notice to the Holders of the Initial Covered Debt, in the manner provided in the indenture relating to the Initial Covered Debt, of this Replacement Capital Covenant and the rights granted to such Holders hereunder and (y) file a copy of this Replacement Capital Covenant with the Commission as an exhibit to a Current Report on Form 8-K under the Securities Exchange Act; (ii) so long as the Corporation is a reporting company under the Securities Exchange Act, the Corporation will include in each annual report filed with the Commission on Form 10-K under the Securities Exchange Act a description of the covenant set forth in Section 2 and identify the series of long-term indebtedness for borrowed money that is Covered Debt as of the date such Form 10-K is filed with the Commission; (iii) if a series of the Corporation’s or one of its Depository Institution Subsidiary’s long-term indebtedness for money borrowed (1) becomes Covered Debt or (2) ceases to be Covered Debt, give notice of such occurrence within 30 days to the holders of such long-term indebtedness for money borrowed in the manner provided for in the indenture, fiscal agency agreement or other instrument under which such long-term indebtedness for money borrowed was issued and report such change in the Corporation’s next quarterly report on Form 10-Q or annual report on Form 10-K, as applicable; (iv) if, and only if, the Corporation ceases to be a reporting company under the Securities Exchange Act, post on its website the information otherwise required to be included in Securities Exchange Act filings pursuant to clauses (ii) and (iii) of this Section 3(c); and (v) promptly upon request by any Holder of Covered Debt, provide such Holder with an executed copy of this Replacement Capital Covenant.

SECTION 4. *Termination, Amendment and Waiver*. (a) The obligations of the Corporation pursuant to this Replacement Capital Covenant shall remain in full force and effect until the earliest date (the “*Termination Date*”) to occur of (i) February 5, 2062, (ii) the date, if any, on which the Holders of a majority by principal amount of the then-effective series of Covered Debt consent or agree in writing to the termination of this Replacement Capital Covenant and the obligations of the Corporation hereunder and (iii) the date on which neither the Corporation nor any of its Depository Institution Subsidiaries has any series of outstanding Eligible Senior Debt or Eligible Subordinated Debt (in each case without giving effect to the rating requirement in clause (b) of the definition of each such term). Moreover, if an event of default under the Supplemental Indenture resulting in an acceleration of the CENts occurs, this Replacement Capital Covenant shall, without any further action, immediately terminate upon such acceleration. From and after the Termination Date, the obligations of the Corporation pursuant to this Replacement Capital Covenant shall be of no further force and effect.

(b) This Replacement Capital Covenant may be amended or supplemented from time to time by a written instrument signed by the Corporation with the consent of the Holders of a majority by principal amount of the then-effective series of Covered Debt, *provided* that this Replacement Capital Covenant may be amended or supplemented from time to time by a written instrument signed only by the Corporation (and without the consent of the Holders of the then-effective series of Covered Debt) if any

of the following apply (it being understood that any such amendment or supplement may fall into one or more of the following): (i) the effect of such amendment or supplement is solely to impose additional restrictions on, or to eliminate certain of, the types of securities qualifying as Replacement Capital Securities, and an officer of the Corporation has delivered to the Holders of the then-effective series of Covered Debt in the manner provided for in the indenture, fiscal agency agreement or other instrument with respect to such Covered Debt a written certificate to that effect, (ii) such amendment or supplement is not materially adverse to the rights of the Covered Debtholders hereunder and an officer of the Corporation has delivered to the Holders of the then-effective series of Covered Debt in the manner provided for in the indenture, fiscal agency agreement or other instrument with respect to such Covered Debt a written certificate stating that, in his or her determination, such amendment or supplement is not materially adverse to the Covered Debtholders, or (iii) such amendment or supplement eliminates Common Stock and/or Mandatorily Convertible Preferred Stock (but only to the extent exchangeable for Common Stock) as Replacement Capital Securities if, in the case of this clause (iii), the Corporation has been advised in writing by a nationally recognized independent accounting firm that there is more than an insubstantial risk that the failure to do so would result in a reduction in the Corporation's earnings per share as calculated for financial reporting purposes.

(c) For purposes of Sections 4(a) and 4(b), the Holders whose consent or agreement is required to terminate, amend or supplement the obligations of the Corporation under this Replacement Capital Covenant shall be the Holders of the then-effective Covered Debt as of a record date established by the Corporation that is not more than 30 days prior to the date on which the Corporation proposes that such termination, amendment or supplement becomes effective.

SECTION 5. *Miscellaneous*. (a) **This Replacement Capital Covenant shall be governed by and construed in accordance with the laws of the State of New York.**

(b) This Replacement Capital Covenant shall be binding upon the Corporation and its successors and assigns and shall inure to the benefit of the Covered Debtholders as they exist from time-to-time (it being understood and agreed by the Corporation that any Person who is a Covered Debtholder at the time such Person acquires, holds or sells Covered Debt shall retain its status as a Covered Debtholder for so long as the series of long-term indebtedness for borrowed money owned by such Person is Covered Debt and, if such Person initiates a claim or proceeding to enforce its rights under this Replacement Capital Covenant after the Corporation has violated its covenants in Section 2 and before the series of long-term indebtedness for money borrowed held by such Person is no longer Covered Debt, such Person's rights under this Replacement Capital Covenant shall not terminate by reason of such series of long-term indebtedness for money borrowed no longer being Covered Debt). Other than the Covered Debtholders as provided in the previous sentence, no other Person shall have any rights under this Replacement Capital Covenant or be deemed a third party beneficiary of this Replacement Capital Covenant. In particular, no holder of the CENts is a third party beneficiary of this Replacement Capital Covenant, it being understood that such holders may have rights under the Supplemental Indenture.

(c) All demands, notices, requests and other communications to the Corporation under this Replacement Capital Covenant shall be deemed to have been duly given and made if in writing and (i) if served by personal delivery upon the Corporation, on the day so delivered (or, if such day is not a Business Day, the next succeeding Business Day), (ii) if delivered by registered post or certified mail, return receipt requested, or sent to the Corporation by a national or international courier service, on the date of receipt by the Corporation (or, if such date of receipt is not a Business Day, the next succeeding Business Day), or (iii) if sent by telecopier, on the day telecopied, or if not a Business Day, the next

succeeding Business Day, *provided* that the telecopy is promptly confirmed by telephone confirmation thereof, and in each case to the Corporation at the address set forth below, or at such other address as the Corporation may thereafter notify to Covered Debtholders or post on its website as the address for notices under this Replacement Capital Covenant:

Capital One Financial Corporation
1680 Capital One Drive
McLean, Virginia 22102
Attention: Director of Capital Markets
Facsimile No: (703) 720-2165

In Witness Whereof, the Corporation has caused this Replacement Capital Covenant to be executed by its duly authorized officer, as of the day and year first above written.

CAPITAL ONE FINANCIAL CORPORATION

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

Definitions

"*Alternative Payment Mechanism*" means, with respect to any securities or combination of securities (together in this definition, "*securities*"), provisions in the related transaction documents that require the Corporation to issue (or use commercially reasonable efforts to issue) one or more types of APM Qualifying Securities raising eligible proceeds at least equal to the deferred Distributions on such securities and apply the proceeds to pay unpaid Distributions on such securities, commencing on the earlier of (x) the first Distribution Date after commencement of a deferral period on which the Corporation pays current Distributions on such securities and (y) the fifth anniversary of the commencement of such deferral period, and that:

(a) define "eligible proceeds" to mean, for purposes of such Alternative Payment Mechanism, the net proceeds (after underwriters' or placement agents' fees, commissions or discounts and other expenses relating to the issuance or sale of the relevant securities, where applicable, and including the fair market value of property received by the Corporation or any of its Subsidiaries as consideration for such securities) that the Corporation has received during the six months prior to the related Distribution Date from the issuance of APM Qualifying Securities, up to the Preferred Cap in the case of APM Qualifying Securities that are Qualifying Non-Cumulative Preferred Stock;

(b) permit the Corporation to pay current Distributions on any Distribution Date out of any source of funds but (x) require the Corporation to pay deferred Distributions only out of eligible proceeds and (y) prohibit the Corporation from paying deferred Distributions out of any source of funds other than eligible proceeds, unless otherwise required at the time by the Federal Reserve;

(c) if deferral of Distributions continues for more than one year, require the Corporation not to redeem or repurchase any of its Common Stock until at least one year after all deferred Distributions have been paid (the "*Repurchase Restriction*");

(d) notwithstanding clause (b) of this definition, if the Federal Reserve disapproves the issuer's sale of APM Qualifying Securities, may (if the Corporation elects to so provide in the terms of such securities) permit the Corporation to pay deferred Distributions from any source without a breach of its obligations under the transaction documents;

(e) if the Federal Reserve does not disapprove the Corporation's issuance and sale of APM Qualifying Securities but disapproves the use of the proceeds thereof to pay deferred Distributions, may (if the Corporation elects to so provide in the terms of such securities) permit the Corporation to use such proceeds for other purposes and to continue to defer Distributions without a breach of its obligations under the transaction documents;

(f) limit the obligation of the Corporation to issue (or use commercially reasonable efforts to issue) APM Qualifying Securities:

(A) in the case of APM Qualifying Securities that are Common Stock and rights to purchase Common Stock, either (i) during the first five years of any deferral period or (ii) with respect to deferred Distributions attributable to the first five years of any deferral period (provided that such limitation shall not apply after the ninth anniversary of the commencement of any deferral period), (x) to an aggregate amount of such securities, the net proceeds from the issuance thereof pursuant to the Alternative Payment Mechanism is equal to 2% of the Corporation's market capitalization or (y) to a

number of shares of Common Stock and rights to purchase a number of shares of Common Stock, in the aggregate, not in excess of 2% of the outstanding number of shares of Common Stock (the amount in clause (x) or (y) is referred to as the "*Common Cap*"); and

(B) in the case of APM Qualifying Securities that are Qualifying Non-Cumulative Preferred Stock, an amount from the issuance thereof pursuant to the related Alternative Payment Mechanism (including at any point in time from all prior issuances thereof pursuant to such Alternative Payment Mechanism) equal to 25% of the liquidation or principal amount of the securities that are the subject of the related Alternative Payment Mechanism (the "*Preferred Cap*");

(g) in the case of securities other than Non-Cumulative Perpetual Preferred Stock, include a Bankruptcy Claim Limitation Provision; and

(h) permit the Corporation, at its option, to provide that if the Corporation is involved in a merger, consolidation, amalgamation, binding share exchange or conveyance, transfer or lease of assets substantially as an entirety to any other person or a similar transaction (a "*business combination*") where immediately after the consummation of the business combination more than 50% of the surviving or resulting entity's voting stock is owned by the shareholders of the other party to the business combination, then clauses (a), (b) and (c) above will not apply to any deferral period that is terminated on the next interest payment date following the date of consummation of the business combination;

provided (and it being understood) that:

(a) the Alternative Payment Mechanism may at the Corporation's discretion include a share cap limiting the issuance of APM Qualifying Securities consisting of Common Stock and rights to purchase Common Stock, in each case to a maximum issuance cap to be set at the Corporation's discretion and otherwise substantially similar to the "share cap", as defined in the Prospectus Supplement, *provided* that such maximum issuance cap shall not represent a lower proportion of the Corporation's shares of Common Stock as of the date of issuance of such securities than the "share cap" represents as a proportion of the Corporation's outstanding shares of Common Stock, as of the date of the Prospectus Supplement;

(b) the Corporation shall not be obligated to issue (or use commercially reasonable efforts to issue) APM Qualifying Securities for so long as a Market Disruption Event has occurred and is continuing;

(c) if, due to a Market Disruption Event or otherwise, the Corporation is able to raise and apply some, but not all, of the eligible proceeds necessary to pay all deferred Distributions on any Distribution Date, the Corporation will apply any available eligible proceeds to pay accrued and unpaid Distributions on the applicable Distribution Date in chronological order subject to the Common Cap, the Preferred Cap, and any maximum issuance cap referred to above, as applicable; and

(d) if the Corporation has outstanding more than one class or series of securities under which it is obligated to sell a type of APM Qualifying Securities and apply some part of the proceeds to the payment of deferred Distributions, then on any date and for any period the amount of net proceeds received by the Corporation from those sales and available for payment of deferred Distributions

on such securities shall be applied to such securities on a pro rata basis up to the Common Cap, the Preferred Cap and any maximum issuance cap referred to above, as applicable, in proportion to the total amounts that are due on such securities, or on such other basis as the Federal Reserve may approve.

"*APM Qualifying Securities*" means, with respect to an Alternative Payment Mechanism, one or more of the following (as designated in the transaction documents for the Qualifying Capital Securities that include an Alternative Payment Mechanism):

(a) Common Stock; or

(b) rights to purchase Common Stock; and

(c) Qualifying Non-Cumulative Preferred Stock;

provided that if the APM Qualifying Securities for any Alternative Payment Mechanism include both Common Stock and rights to purchase Common Stock, such Alternative Payment Mechanism may permit, but need not require, the Corporation to issue rights to purchase Common Stock.

"*Applicable Percentage*" means a percentage equivalent of 1 divided by (a) 75% with respect to any repayment, redemption or purchase on or prior to February 5, 2032, (b) 50% with respect to any repayment, redemption or purchase after February 5, 2032 and on or prior to February 5, 2052 and (c) 25% with respect to any repayment, redemption or purchase after February 5, 2052.

"*Bankruptcy Claim Limitation Provision*" means, with respect to any securities or combination of securities that have an Alternative Payment Mechanism or a Mandatory Trigger Provision (together in this definition, "*securities*"), provisions that, upon any liquidation, dissolution, winding up or reorganization or in connection with any insolvency, receivership or proceeding under any bankruptcy law with respect to the issuer, limit the claim of the holders of such securities to Distributions that accumulate during (a) any deferral period, in the case of securities that have an Alternative Payment Mechanism or (b) any period in which the Corporation fails to satisfy one or more financial tests set forth in the terms of such securities or related transaction agreements, in the case of securities having a Mandatory Trigger Provision, to:

(i) in the case of securities having an Alternative Payment Mechanism or Mandatory Trigger Provision with respect to which the APM Qualifying Securities do not include Qualifying Non-Cumulative Preferred Stock, 25% of the stated or principal amount of such securities then outstanding; and

(ii) in the case of any other securities, the sum of (x) the amount of accumulated and unpaid Distributions (including compounded amounts) that relate to the earliest two years of the portion of the deferral period for which Distributions have not been paid and (y) an amount equal to the excess, if any, of the Preferred Cap over the aggregate amount of net proceeds from the sale of Qualifying Non-Cumulative Preferred Stock that the issuer has applied to pay such Distributions pursuant to the Alternative Payment Mechanism or the Mandatory Trigger Provision, *provided* that the holders of such securities are deemed to agree that, to the extent the remaining claim exceeds the amount set forth in subclause (x), the amount they receive in respect of such excess shall not exceed the amount they would have received had such claim ranked *pari passu* with the interests of the holders, if any, of Qualifying Non-Cumulative Preferred Stock.

"*Business Day*" means each day other than (a) a Saturday or Sunday or (b) a day on which banking institutions in The City of New York are authorized or required by law or executive order to remain closed or, on or after February 17, 2032, a day that is not a London business day. A "*London business day*" is any day on which dealings in deposits in U.S. dollars are transacted in the London interbank market.

"*Capital Securities*" has the meaning specified in Recital B.

"*CENts*" has the meaning specified in Recital A.

"*Commission*" means the United States Securities and Exchange Commission.

"*Common Cap*" has the meaning specified in the definition of Alternative Payment Mechanism.

"*Common Stock*" means any equity securities of the Corporation (including equity securities held as treasury shares and equity securities sold pursuant to our dividend reinvestment plan and employee benefit plans) that have no preference in the payment of dividends or amounts payable upon the liquidation, dissolution or winding up of the Corporation (including a security that tracks the performance of, or relates to the results of, a business, unit or division of the Corporation), and any securities issued in exchange therefor in connection with a merger, consolidation, binding share exchange, business combination, recapitalization or other similar event.

"*Corporation*" has the meaning specified in the introduction to this instrument.

"*Covered Debt*" means (a) at the date of this Replacement Capital Covenant and continuing to but not including the first Redesignation Date, the Initial Covered Debt and (b) thereafter, commencing with each Redesignation Date and continuing to but not including the next succeeding Redesignation Date, the Eligible Debt identified pursuant to Section 3(b) as the Covered Debt for such period.

"*Covered Debtholder*" means each Person (whether a Holder or a beneficial owner holding through a participant in a clearing agency) that buys, holds or sells long-term indebtedness for money borrowed of the Corporation or its Depository Institution Subsidiary during the period that such long-term indebtedness for money borrowed is Covered Debt.

"*Debt Exchangeable for Equity*" means a security or combination of securities (together in this definition, "*securities*") that:

(a) gives the holder a beneficial interest in (a) debt securities of the Corporation that are Non-Cumulative and that are the most junior subordinated debt of the Corporation (or rank *pari passu* with the most junior subordinated debt of the Corporation) and (b) a fractional interest in a stock purchase contract for Qualifying Non-Cumulative Preferred Stock;

(b) provides that the investors directly or indirectly grant to the Corporation a security interest in such debt securities and their proceeds (including any substitute collateral permitted under the transaction documents) to secure the investors' direct or indirect obligation to purchase the Corporation's preferred stock pursuant to such stock purchase contract;

(c) includes a remarketing feature pursuant to which the subordinated debt of the Corporation is remarketed to new investors commencing within five years from the date of issuance of the security or earlier in the event of an early settlement event based on (a) the capital ratios of the Corporation, (b) the capital ratios of the Corporation as anticipated by the Federal Reserve, or (c) the dissolution of the issuer of such Debt Exchangeable for Equity;

(d) provides for the proceeds raised in the remarketing to be used to purchase Qualifying Non-Cumulative Preferred Stock under the stock purchase contracts and, if there has not been a successful remarketing by the first Distribution Date that is six years after the date of issuance of such debt securities of the Corporation, provides that the stock purchase contracts will be settled by the Corporation exercising its remedies as a secured party with respect to such debt securities or other collateral directly or indirectly pledged by investors in the Debt Exchangeable for Equity;

(e) includes a replacement capital covenant substantially similar to this Replacement Capital Covenant, *provided* that such replacement capital covenant will apply to such securities and to the Qualifying Non-Cumulative Preferred Stock and will not include Debt Exchangeable for Equity in the definition of "qualifying capital securities"; and

(f) after the issuance of such Qualifying Non-Cumulative Preferred Stock, provides the holder of the security with a beneficial interest in such Qualifying Non-Cumulative Preferred Stock.

"Depository Institution Subsidiary" means any Subsidiary of the Corporation that is a depository institution within the meaning of 12 C.F.R. § 204.2(m).

"Distribution Date" means, as to any securities or combination of securities, the dates on which periodic Distributions on such securities are scheduled to be made.

"Distribution Period" means, as to any securities or combination of securities, each period from and including a Distribution Date for such securities to but not including the next succeeding Distribution Date for such securities.

"*Distributions*" means, as to a security or combination of securities, dividends, interest payments or other income distributions to the holders thereof that are not Subsidiaries of the Corporation.

"*Eligible Debt*" means, at any time, Eligible Subordinated Debt or, if no Eligible Subordinated Debt is then outstanding, Eligible Senior Debt.

"*Eligible Senior Debt*" means, at any time in respect of any issuer, each series of outstanding long-term indebtedness for money borrowed of such issuer that (a) upon a bankruptcy, liquidation, dissolution or winding up of the issuer, ranks most senior among the issuer's then outstanding classes of unsecured indebtedness for money borrowed, (b) is then assigned a rating by at least one NRSRO (provided that this clause (b) shall apply on a Redesignation Date only if on such date the issuer has outstanding senior long-term indebtedness for money borrowed that satisfies the requirements of clauses (a), (c) and (d) that is then assigned a rating by at least one NRSRO), (c) has an outstanding principal amount of not less than $100,000,000, (d) was issued through or with the assistance of a commercial or investment banking firm or firms acting as underwriters, initial purchasers or placement or distribution agents, and (e) if issued by a Depository Institution Subsidiary, is fully and unconditionally guaranteed by the Corporation on (I) a subordinated basis or (II) if on the relevant Redesignation Date there is no outstanding debt of a Depository Institution Subsidiary meeting the other requirements set

forth above and guaranteed by the Corporation on a subordinated basis but there is outstanding debt of a Depository Institution Subsidiary meeting such requirements and guaranteed on a senior basis, a senior basis. For purposes of this definition as applied to securities with a CUSIP number, each issuance of long-term indebtedness for money borrowed that has (or, if such indebtedness is held by a trust or other intermediate entity established directly or indirectly by the issuer, the securities of such intermediate entity that have) a separate CUSIP number shall be deemed to be a series of the issuer's long-term indebtedness for money borrowed that is separate from each other series of such indebtedness.

"*Eligible Subordinated Debt*" means, at any time in respect of any issuer, each series of the issuer's then-outstanding long-term indebtedness for money borrowed that (a) upon a bankruptcy, liquidation, dissolution or winding up of the issuer, ranks subordinate to the issuer's then outstanding series of unsecured indebtedness for money borrowed that ranks most senior, (b) is then assigned a rating by at least one NRSRO (provided that this clause (b) shall apply on a Redesignation Date only if on such date the issuer has outstanding subordinated long-term indebtedness for money borrowed that satisfies the requirements in clauses (a), (c) and (d) that is then assigned a rating by at least one NRSRO), (c) has an outstanding principal amount of not less than $100,000,000, and (d) was issued through or with the assistance of a commercial or investment banking firm or firms acting as underwriters, initial purchasers or placement or distribution agents, and (e) if issued by a Depository Institution Subsidiary, is fully and unconditionally guaranteed by the Corporation on (I) a subordinated basis or (II) if on the relevant Redesignation Date there is no outstanding debt of a Depository Institution Subsidiary meeting the other requirements set forth above and guaranteed by the Corporation on a subordinated basis but there is outstanding debt of a Depository Institution Subsidiary meeting such requirements and guaranteed on a senior basis, a senior basis. For purposes of this definition as applied to securities with a CUSIP number, each issuance of long-term indebtedness for money borrowed that has (or, if such indebtedness is held by a trust or other intermediate entity established directly or indirectly by the issuer, the securities of such intermediate entity that have) a separate CUSIP number shall be deemed to be a series of the issuer's long-term indebtedness for money borrowed that is separate from each other series of such indebtedness.

"*Federal Reserve*" means the Board of Governors of the Federal Reserve System or any successor thereto as primary regulator of the Corporation.

"*Holder*" means, as to the Covered Debt then in effect, each holder of such Covered Debt as reflected on the securities register maintained by or on behalf of the Corporation with respect to such Covered Debt.

"*Initial Covered Debt*" means the Corporation's 5.35% Subordinated Notes Due May 1, 2014.

"*Intent-Based Replacement Disclosure*" means, as to any security or combination of securities, that the issuer has publicly stated its intention, either in the prospectus or other offering document under which such securities were initially offered for sale or in filings with the Commission made by the issuer under the Securities Exchange Act prior to or contemporaneously with the issuance of such securities, that the issuer will redeem or purchase such securities only with the proceeds of replacement capital securities that have terms and provisions at the time of redemption or purchase that are as or more equity-like than the securities then being redeemed or purchased, raised within six months prior to the applicable redemption or purchase date. Notwithstanding the use of the term Intent-Based Replacement Disclosure in the definitions of Qualifying Capital Securities and Qualifying Non-Cumulative Preferred Stock, the requirement in those definitions that a particular security or the related transaction documents include Intent-Based Replacement Disclosure shall be disregarded and given no force or effect for so long as the Corporation is a bank holding company within the meaning of the Bank Holding Company Act of 1956, as amended.

"*Largest Depository Institution Subsidiary*" means, from time to time, the Depository Institution Subsidiary of the Corporation with the greatest total assets that also has outstanding at least one series of Eligible Subordinated Debt; *provided*, however, that if no Depository Institution Subsidiary of the Corporation has outstanding a series of Eligible Subordinated Debt, this term shall mean the Depository Institution Subsidiary of the Corporation with the greatest total assets that also has outstanding at least one series of Eligible Senior Debt.

"*Mandatorily Convertible Preferred Stock*" means cumulative preferred stock with (a) no prepayment obligation on the part of the issuer thereof, whether at the election of the holders or otherwise, and (b) a requirement that the preferred stock convert into Common Stock of the Corporation within three years from the date of its issuance at a conversion ratio within a range established at the time of issuance of the preferred stock.

"*Mandatory Trigger Provision*" means, as to any security or combination of securities, provisions in the terms thereof or of the related transaction agreements that:

(a) require, or at its option in the case of non-cumulative perpetual preferred stock permit, the issuer of such security or combination of securities to make payment of Distributions on such securities only pursuant to the issuance and sale of APM Qualifying Securities, within two years of a failure to satisfy one or more financial tests set forth in the terms of such securities or related transaction agreements, in amount such that the net proceeds of such sale are at least equal the amount of unpaid Distributions on such securities (including without limitation all deferred and accumulated amounts), and in either case require the application of the net proceeds of such sale to pay such unpaid Distributions, *provided* that (i) if the Mandatory Trigger Provision does not require such issuance and sale within one year of such failure, the amount of Common Stock or rights to acquire Common Stock the net proceeds of which the issuer must apply to pay such Distributions pursuant to such provision may not exceed the Common Cap, and (ii) the amount of Qualifying Non-Cumulative Preferred Stock the net proceeds of which the issuer may apply to pay such distributions pursuant to such provision may not exceed the Preferred Cap;

(b) other than in the case of non-cumulative preferred stock, if the provisions described in clause (a) do not require such issuance and sale within one year of such failure, prohibit the Corporation from repurchasing any of its Common Stock prior to the date six months after the issuer applies the net proceeds of the sales described in clause (a) to pay such unpaid Distributions in full; and

(c) other than in the case of non-cumulative perpetual preferred stock, include a Bankruptcy Claim Limitation Provision.

No remedy other than Permitted Remedies will arise by the terms of such securities or related transaction agreements in favor of the holders of such securities as a result of the issuer's failure to pay Distributions because of the Mandatory Trigger Provision until Distributions have been deferred for one or more Distribution Periods that total together at least ten years.

"*Market Disruption Events*" means one or more events or circumstances substantially similar to those listed as "Market Disruption Events" in the Supplemental Indenture.

"*Market Value*" means, on any date, (i) in the case of Common Stock, the closing sale price per share of Common Stock (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions by the New York Stock Exchange or, if the Common Stock is not then listed on the New York Stock Exchange, as reported by the principal U.S. securities exchange on which the Common Stock is traded or quoted; if the Common Stock is not either listed or quoted on any U.S. securities exchange on the relevant date, the market price will be the average of the mid-point of the bid and ask prices for the Common Stock on the relevant date submitted by at least three nationally recognized independent investment banking firms selected by the Corporation for this purpose and (ii) in the case of rights to acquire Common Stock, a value determined by a nationally recognized independent investment banking firm selected by the Corporation's Board of Directors (or a duly authorized committee thereof) for this purpose.

"*Measurement Date*" means (a) with respect to any repayment, redemption or purchase on or prior to February 17, 2037, the date that is 180 days prior to delivery of notice of such repayment, redemption or purchase; an (b) with respect to any repayment, redemption or purchase after February 17, 2037, the date that is 30 days prior to the date of such repayment, redemption or purchase, except that, if during the 150 days (or any shorter period) preceding the date that is 30 days prior to the date of such repayment, redemption or purchase, net cash proceeds described above were received but no repayment, redemption or purchase was made in connection therewith, the date upon which such 150 day (or shorter) period prior to the date of such repayment, redemption or purchase began.

"*Measurement Period*" with respect to any notice date or purchase date means the period (i) beginning on the Measurement Date with respect to such notice date or purchase date and (ii) ending on such notice date or purchase date. Measurement Periods cannot run concurrently.

"*Non-Cumulative*" means, with respect to any securities, that the issuer thereof may elect not to make any number of periodic Distributions without any remedy arising under the terms of the securities or related agreements in favor of the holders, other than one or more Permitted Remedies. Securities that include an Alternative Payment Mechanism shall also be deemed to be Non-Cumulative for all purposes of this Replacement Capital Covenant, other than the definitions of APM Qualifying Securities and Qualifying Non-Cumulative Preferred Stock, and debt securities that include an Alternative Payment Mechanism shall be deemed to be Non-Cumulative for purposes of the definition of Debt Exchangeable for Equity (it being understood that such Alternative Payment Mechanism for the purposes of the definition of Debt Exchangeable for Equity need not include a Common Cap, a Preferred Cap or a Bankruptcy Claim Limitation Provision).

"*NRSRO*" means a nationally recognized statistical rating organization within the meaning of Rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act.

"*Optional Deferral Provision*" means, as to any securities, a provision in the terms thereof or of the related transaction agreements to the effect of either (a) or (b) below:

(a) (i) the issuer of such securities may, in its sole discretion, defer in whole or in part payment of Distributions on such securities for one or more consecutive Distribution Periods of up to five years or, if a Market Disruption Event is continuing, ten years, without any remedy other than Permitted Remedies and (ii) such securities are subject to an Alternative Payment Mechanism (*provided* that such Alternative Payment Mechanism need not apply during the first 5 years of any deferral period and need not include a Common Cap, Preferred Cap, Bankruptcy Claim Limitation Provision or Repurchase Restriction); or

(b) the issuer of such securities may, in its sole discretion, defer in whole or in part payment of Distributions on such securities for one or more consecutive Distribution Periods up to ten years, without any remedy other than Permitted Remedies.

"*Other Qualifying Replacement Capital Covenant*" means a replacement capital covenant, as identified by the Corporation's Board of Directors, (a) entered into by a company that at the time it enters into such replacement capital covenant is a reporting company under the Securities Exchange Act and (b) that restricts the related issuer from redeeming or purchasing identified securities except to the extent of the applicable percentage of the net proceeds of specified Replacement Capital Securities that have terms and provisions at the time of redemption or purchase that are as or more equity-like than the securities then being redeemed or purchased, raised within the six month period prior to the applicable redemption or purchase date.

"*Permitted Remedies*" means, with respect to any securities, one or more of the following remedies:

(a) rights in favor of the holders of such securities permitting such holders to elect one or more directors of the issuer (including any such rights required by the listing requirements of any stock or securities exchange on which such securities may be listed or traded), and

(b) complete or partial prohibitions on the issuer paying Distributions on or repurchasing common stock or other securities that rank *pari passu* with or junior as to Distributions to such securities for so long as Distributions on such securities, including unpaid Distributions, remain unpaid.

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

"*Preferred Cap*" has the meaning specified in the definition of Alternative Payment Mechanism.

"*Prospectus Supplement*" has the meaning specified in Recital C.

"*Qualifying Capital Securities*" means securities (other than Common Stock, rights to acquire Common Stock and securities convertible into Common Stock) that (a) qualify as Tier 1 capital of the Corporation under the capital guidelines of the Federal Reserve as then in effect and applicable to bank holding companies and (b) in the determination of the Corporation's Board of Directors, reasonably construing the definitions and other terms of the Replacement Capital Covenant, meet one of the following criteria:

(i) in connection with any repayment, redemption or purchase of CENts or Capital Securities on or prior to February 5, 2032:

(A) junior subordinated debt securities and guarantees issued by the Corporation with respect to trust preferred securities if the junior subordinated debt

securities and guarantees (1) rank *pari passu* with or junior to the CENts upon the liquidation, dissolution or winding-up of the Corporation, (2) are Non-Cumulative, (3) have no maturity or a maturity of at least 60 years, and (4) are subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Replacement Capital Covenant;

(B) securities issued by the Corporation or its Subsidiaries that (1) rank *pari passu* with or junior to the CENts upon a liquidation, dissolution or winding up of the Corporation, (2) have no maturity or a maturity of at least 60 years, and (3) either (i) are Non-Cumulative and are subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Replacement Capital Covenant or (ii) have a Mandatory Trigger Provision, an Optional Deferral Provision and Intent-Based Replacement Disclosure; or

(C) securities issued by the Corporation or its Subsidiaries that (1) rank *pari passu* with or junior to the CENts upon a liquidation, dissolution or winding up of the Corporation, (2) have no maturity or a maturity of at least 40 years, (3) are subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Replacement Capital Covenant, and (4) have a Mandatory Trigger Provision and Optional Deferral Provision;

(ii) in connection with any repayment, redemption or purchase of the CENts or Capital Securities after February 5, 2032 and on or prior to February 5, 2052:

(A) all securities described under clause (i) of this definition;

(B) securities issued by the Corporation or its Subsidiaries that (1) rank *pari passu* with or junior to the CENts upon a liquidation, dissolution or winding up of the Corporation, (2) have no maturity or a maturity of at least 60 years, (3) are subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Replacement Capital Covenant and (4) have an Optional Deferral Provision;

(C) securities issued by the Corporation or its Subsidiaries that (1) rank *pari passu* with or junior to the CENts upon a liquidation, dissolution or winding up of the Corporation, (2) are Non-Cumulative and (3) have no maturity or a maturity of at least 60 years; and (4) have Intent-Based Replacement Disclosure;

(D) securities issued by the Corporation or its Subsidiaries that (1) rank *pari passu* with or junior to the CENts upon the liquidation, dissolution or winding up of the Corporation, (2) have no maturity or a maturity at least 40 years; (3) either (i) are Non-Cumulative and are subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Replacement Capital Covenant or (ii) have a Mandatory Trigger Provision, an Optional Deferral Provision and Intent-Based Replacement Disclosure;

(E) securities issued by the Corporation or its Subsidiaries that (1) rank senior to the CENts and junior to the Corporation’s senior subordinated debt qualifying as Tier 2 capital under the Federal Reserve’s risk based capital adequacy guidelines upon

a liquidation, dissolution or winding up of the Corporation, (2) have a Mandatory Trigger Provision and an Optional Deferral Provision, (3) have no maturity or a maturity of at least 60 years, and (4) have Intent-Based Replacement Disclosure;

(F) cumulative preferred stock issued by the Corporation or its Subsidiaries that (1) has no prepayment obligation on the part of the issuer thereof, whether at the election of the holders or otherwise, and (2) (a) has no maturity or a maturity of at least 60 years and (b) is subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Replacement Capital Covenant; or

(G) other securities issued by the Corporation or its Subsidiaries that (A) rank upon a liquidation, dissolution or winding-up of the Corporation either (1) *pari passu* with or junior to the CENts or (2) *pari passu* with the claims of the Corporation's trade creditors and junior to the Corporation's senior subordinated debt qualifying as Tier 2 capital under the Federal Reserve's risk based capital adequacy guidelines upon a liquidation, dissolution or winding up of the Corporation and to all of the Corporation's long-term indebtedness for money borrowed (other than the Corporation's long-term indebtedness for money borrowed from time to time outstanding that by its terms ranks pari passu with such securities on a liquidation, dissolution or winding-up of the Corporation); and (B) have a Mandatory Trigger Provision and an Optional Deferral Provision and either (x) have no maturity or a maturity of at least 40 years and have Intent-Based Replacement Disclosure and or (y) have no maturity or a maturity of at least 25 years and are subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Replacement Capital Covenant; or

(iii) in connection with any repayment, redemption or purchase of CENts or Capital Securities at any time after February 5, 2052:

(A) all securities described under clause (ii) of this definition;

(B) preferred stock issued by the Corporation that (1) has no maturity or a maturity of at least 60 years and (2) has an Optional Deferral Provision and Intent-Based Replacement Disclosure;

(C) securities issued by the Corporation or its Subsidiaries that (1) rank *pari passu* with or junior to the CENts upon a liquidation, dissolution or winding up of the Corporation, (2) either (A) have no maturity or a maturity of at least 60 years and Intent-Based Replacement Disclosure or (B) have no maturity or a maturity of at least 30 years and are subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Replacement Capital Covenant and (3) have an Optional Deferral Provision;

(D) securities issued by the Corporation or its Subsidiaries that (1) rank senior to the CENts and junior to the Corporation's senior subordinated debt qualifying as Tier 2 capital under the Federal Reserve's risk based capital adequacy guidelines upon a liquidation, dissolution or winding up of the Corporation, (2) have a Mandatory Trigger Provision and an Optional Deferral Provision, (3) have no maturity or a maturity at least 30 years and (4) have Intent-Based Replacement Disclosure; or

(E) cumulative preferred stock issued by the Corporation or its Subsidiaries that either (1) has no maturity or a maturity of at least 60 years and Intent-Based Replacement Disclosure or (2) has a maturity of at least 40 years and is subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Replacement Capital Covenant.

It is acknowledged that the Federal Reserve has not approved as a Tier 1 capital instrument for bank holding companies securities containing a Mandatory Trigger Provision that otherwise would be Qualifying Capital Securities and, accordingly, these securities would not constitute Qualifying Capital Securities unless such approval is obtained.

"*Qualifying Non-Cumulative Preferred Stock*" means non-cumulative perpetual preferred stock issued by the Corporation or its Subsidiaries that ranks *pari passu* with or junior to all other preferred stock of the issuer and contains no remedies other than Permitted Remedies and either (i) is subject to Intent-Based Replacement Disclosure and has a provision that prohibits the Corporation from making any Distributions thereon upon the Corporation's failure to satisfy one or more financial tests set forth therein or (ii) is subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Replacement Capital Covenant.

"*Redesignation Date*" means, as to the Covered Debt in effect at any time, the earliest of (a) the date that is two years prior to the final maturity date of such Covered Debt, (b) if the Corporation elects to redeem, or the Corporation or a Subsidiary of the Corporation elects to repurchase, such Covered Debt either in whole or in part with the consequence that after giving effect to such redemption or repurchase the outstanding principal amount of such Covered Debt is less than $100,000,000, the applicable redemption or repurchase date and (c) if such Covered Debt is not Eligible Subordinated Debt of the Corporation, the date on which the Corporation issues long-term indebtedness for money borrowed that is Eligible Subordinated Debt.

"*Replacement Capital Covenant*" has the meaning specified in the introduction to this instrument.

"*Replacement Capital Securities*" means

(a) Common Stock and rights to acquire Common Stock;

(b) Mandatorily Convertible Preferred Stock;

(c) Debt Exchangeable for Equity; and

(d) Qualifying Capital Securities.

"*Repurchase Limitation*" has the meaning specified in the definition of Alternative Payment Mechanism.

"*Rights to acquire Common Stock*" includes any right to acquire Common Stock, including any right to acquire Common Stock pursuant to a stock purchase plan or employee benefit plan.

"*Securities Exchange Act*" means the Securities Exchange Act of 1934, as amended.

"*Securities*" has the meaning specified in Recital B.

"*Subsidiary*" means, at any time, any Person the shares of stock or other ownership interests of which having ordinary voting power to elect a majority of the board of directors or other managers of such Person are at the time owned, or the management or policies of which are otherwise at the time controlled, directly or indirectly through one or more intermediaries (including other Subsidiaries) or both, by another Person.

"*Supplemental Indenture*" means the Supplemental Indenture, dated as of February 5, 2007, between the Corporation and The Bank of New York, as Trustee.

"*Termination Date*" has the meaning specified in Section 4(a).

"*Trust*" has the meaning specified in Recital A.