

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

FORM 8-K

CURRENT REPORT

**PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934**

Date of Report (Date of earliest event reported): August 15, 2005

U.S. BANCORP

(Exact name of registrant as specified in its charter)

1-6880

(Commission File Number)

DELAWARE
(State or other jurisdiction
of incorporation)

41-0255900
(I.R.S. Employer
Identification Number)

800 Nicollet Mall
Minneapolis, Minnesota 55402
(Address of principal executive offices and zip code)

(651) 466-3000
(Registrant's telephone number, including area code)

(not applicable)
(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:

- Written communications pursuant to Rule 425 Under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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ITEM 8.01 OTHER EVENTS.

U.S. Bancorp, a Delaware corporation (the “Company”), and USB Capital VII, a statutory trust formed under the laws of the State of Delaware (the “Trust”), closed on August 15, 2005 the public offering of \$300,000,000 aggregate principal amount of the Trust’s 5.875% Trust Preferred Securities (the “Capital Securities”), representing preferred beneficial interests in the Trust, pursuant to an Underwriting Agreement dated August 3, 2005, with Morgan Stanley & Co. Incorporated and Citigroup Global Markets Inc., as representatives (the “Representatives”) of the underwriters named in Schedule I thereto (collectively, the “Underwriters”), which incorporates by reference the U.S. Bancorp Underwriting Agreement Standard Provisions (Capital Securities) (August 3, 2005). The Capital Securities are fully, irrevocably and unconditionally guaranteed on a subordinated basis by the Company pursuant to a Guarantee Agreement (the “Guarantee”) between the Company and Delaware Trust Company, National Association, 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 5.875% Junior Subordinated Debentures of the Company (the “Junior Subordinated Debentures”), due August 15, 2035, issued pursuant to a Junior Subordinated Indenture (the “Indenture”) dated April 28, 2005, as supplemented by the First Supplemental Indenture, dated August 3, 2005, between the Company and Delaware Trust Company, National Association, as Debenture Trustee, and the Officers’ Certificate dated August 15, 2005, pursuant to Section 3.1 of the Indenture. The Capital Securities, the Junior Subordinated Debentures and the Guarantee have been registered under the Securities Act of 1933, as amended, by a registration statement on Form S-3 (File No. 333-124535).

ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS.

(c) Exhibits.

- 1.1 Underwriting Agreement, dated August 3, 2005, between U.S. Bancorp, the Trust and Morgan Stanley & Co. Incorporated and Citigroup Global Markets Inc., as Representatives of the Underwriters.
 - 1.2 U.S. Bancorp Underwriting Agreement Standard Terms (Capital Securities) (August 3, 2005).
 - 4.1 Officers’ Certificate dated August 15, 2005 pursuant to Section 3.1 of the Junior Subordinated Indenture dated as of April 28, 2005, as supplemented, between U.S. Bancorp and Delaware Trust Company, National Association, as Debenture Trustee (excluding exhibits thereto).
 - 4.2 Specimen Capital Security Certificate (included as part of Exhibit 4.4).
 - 4.3 Specimen Junior Subordinated Debenture (included as part of Junior Subordinated Indenture dated April 28, 2005, between U.S. Bancorp and Delaware Trust Company, National Association, as Junior Subordinated
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Trustee, incorporated by reference to Exhibit 4.1 to U.S. Bancorp's Registration Statement on Form S-4 (File No. 333-124535)).

- 4.4 Second Amended and Restated Trust Agreement dated August 15, 2005 between U.S. Bancorp, Delaware Trust Company, National Association, as Property Trustee and Delaware Trustee, and the Administrative Trustees named therein.
 - 4.5 Guarantee Agreement dated August 15, 2005 between U.S. Bancorp and Delaware Trust Company, National Association, as Guarantee Trustee.
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SIGNATURES

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

Date: August 15, 2005

U.S. BANCORP

By: /s/ Lee R. Mitau
Name: Lee R. Mitau
Title: Executive Vice President,
 General Counsel and Secretary

INDEX TO EXHIBITS

- 1.1 Underwriting Agreement, dated August 3, 2005, between U.S. Bancorp, the Trust and Morgan Stanley & Co. Incorporated and Citigroup Global Markets Inc., as Representatives of the Underwriters.
- 1.2 U.S. Bancorp Underwriting Agreement Standard Terms (Capital Securities) (August 3, 2005).
- 4.1 Officers' Certificate dated August 15, 2005 pursuant to Section 3.1 of the Junior Subordinated Indenture dated as of April 28, 2005, as supplemented, between U.S. Bancorp and Delaware Trust Company, National Association, as Debenture Trustee (excluding exhibits thereto).
- 4.2 Specimen Capital Security Certificate (included as part of Exhibit 4.4).
- 4.3 Specimen Junior Subordinated Debenture (included as part of Junior Subordinated Indenture dated April 28, 2005, between U.S. Bancorp and Delaware Trust Company, National Association, as Junior Subordinated Trustee, incorporated by reference to Exhibit 4.1 to U.S. Bancorp's Registration Statement on Form S-4 (File No. 333-124535)).
- 4.4 Second Amended and Restated Trust Agreement dated August 15, 2005 between U.S. Bancorp, Delaware Trust Company, National Association, as Property Trustee and Delaware Trustee, and the Administrative Trustees named therein.
- 4.5 Guarantee Agreement dated August 15, 2005 between U.S. Bancorp and Delaware Trust Company, National Association, as Guarantee Trustee.

UNDERWRITING AGREEMENT

August 3, 2005

U.S. Bancorp
USB Capital VII
800 Nicollet Mall
Minneapolis, MN 55402
Ladies and Gentlemen:

We (the "Representatives") understand that USB Capital VII, a statutory trust formed under the laws of the State of Delaware (the "Trust"), and U.S. Bancorp, a Delaware corporation, as sponsor of the Trust and as guarantor (the "Guarantor"), propose that the Trust issue and sell to the several underwriters named in Schedule I (the "Underwriters") 12,000,000 5.875% Trust Preferred Securities (liquidation amount \$25 per Preferred Security) with an aggregate liquidation amount of \$300,000,000 (the "Firm Securities") representing preferred beneficial interests in the Trust. In addition, the Guarantor and the Trust grant to the Underwriters the right to request the opportunity to purchase up to an additional 1,800,000 Trust Preferred Securities (the "Optional Securities," and together with the Firm Securities, the "Offered Securities"). The Offered Securities are fully and unconditionally guaranteed by U.S. Bancorp. The Guarantor will be the owner of all of the beneficial ownership interests represented by the common securities (liquidation amount \$25 per common security) issued by the Trust (the "Common Securities"). Proceeds from the sale of the Offered Securities to the Underwriters and from the concurrent sale of the Common Securities to the Guarantor will be used to purchase 5.875% Junior Subordinated Debentures of the Guarantor (the "Junior Subordinated Debentures"), due 2035. The Junior Subordinated Debentures will be issued by the Guarantor pursuant to a Junior Subordinated Indenture (the "Indenture") dated as of April 28, 2005, as amended, between the Guarantor and Delaware Trust Company, National Association as trustee (the "Debenture Trustee").

The Guarantor will, through the Indenture, the Junior Subordinated Debentures, the Amended and Restated Trust Agreement dated as of August 15, 2005 (the "Trust Agreement") among the Guarantor, as Sponsor to the Trust, Delaware Trust Company, National Association, as Delaware Trustee and Property Trustee, and the Administrative Trustees named therein (collectively, the "Trustees"), the Guarantee Agreement dated as of August 15, 2005 (the "Guarantee") between the Guarantor and Delaware Trust Company, National Association, as trustee (the "Guarantee Trustee"), taken together, fully, irrevocably and unconditionally guarantee on a subordinated basis all of the Trust's obligations under the Offered Securities.

Subject to the terms and conditions set forth herein and incorporated by reference herein, the Guarantor and the Trust hereby agree that the Guarantor shall sell to each of the Underwriters, and each of the Underwriters agrees, severally and not jointly, to purchase the numbers of the Firm Securities set forth opposite the name of such Underwriter at a purchase price of \$24.2125 per Firm Security, plus accrued distributions, if any (collectively the "Purchase Price"). In addition, subject to the terms and conditions set forth herein and incorporated by reference herein, the Guarantor and the Trust grant to the Underwriters the right to request the opportunity to purchase the Optional Securities at a purchase

price of \$24.2125 per Optional Security, plus accrued distributions, if any. The opportunity to purchase the Optional Securities hereunder is for use by the Underwriters solely for the purpose of covering over-allotments in the sale of the Firm Securities. The right to request the opportunity to purchase the Optional Shares may be exercised at any time upon notice by the Representatives to the Guarantor and the Trust, which notice may be given at any time within 30 days from the date of this document.

The Offered Securities shall have the terms set forth in the Prospectus Supplement dated August 3, 2005.

Except as otherwise provided herein, all the provisions contained in the document entitled "U.S. Bancorp Underwriting Agreement Standard Provisions (Capital Securities) (August 3, 2005)" (the "Standard Underwriting Agreement") are herein incorporated by reference in their entirety and shall be deemed to be a part of this Underwriting Agreement to the same extent as if such provisions had been set forth in full herein. Capitalized terms used herein and not otherwise defined herein shall have the meanings given to them in the Standard Underwriting Agreement.

Certificates for the Firm Securities purchased by each Underwriter shall be delivered by or on behalf of the Guarantor to the Representatives for the account of such Underwriter, against payment by such Underwriter or on its behalf of the Purchase Price therefor in federal (same day) funds, on the "Closing Date," which shall be 10:00 AM (New York City time) on August 15, 2005 at the offices of Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, New York 10017, or at such other place and time as the Representatives, the Guarantor and the Trust may agree upon in writing. Delivery to the Underwriters of and payment to the Guarantor for any Optional Securities to be purchased by the Underwriters shall be made at the aforementioned offices of Simpson Thacher & Bartlett LLP, or at such other place and time as the Representatives, the Guarantor and the Trust may agree upon in writing, at such time on such date, which may be the same as the Closing Date, but shall in no event be earlier than the Closing Date nor earlier than two nor later than three business days after the giving of the notice to exercise the option of the Underwriters.

This document 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 document.

Please confirm your agreement by having an authorized officer sign a copy of this Agreement in the space set forth below and returning the signed copy to us.

CITIGROUP GLOBAL MARKETS INC.
MORGAN STANLEY & CO. INCORPORATED

Acting severally on behalf of themselves and as
representatives of the several Underwriters named in Schedule I
annexed hereto.

By: MORGAN STANLEY & CO. INCORPORATED

By: /s/ Dennis P. O'Rourke
Name: Dennis P. O'Rourke
Title: Vice President

Accepted by:

U.S. BANCORP, as Guarantor

By: /s/ Kenneth D. Nelson
Name: Kenneth D. Nelson
Title: Senior Vice President

USB CAPITAL VII

By: U.S. Bancorp, as Sponsor

By: /s/ Kenneth D. Nelson
Name: Kenneth D. Nelson
Title: Senior Vice President

SCHEDULE I

	<u>Underwriters' Commitment</u>
Morgan Stanley & Co. Incorporated	1,743,000
Citigroup Global Markets Inc.	1,743,000
Merrill Lynch, Pierce, Fenner & Smith Incorporated	1,743,000
UBS Securities LLC	1,743,000
Wachovia Capital Markets, LLC	1,743,000
A.G. Edwards & Sons, Inc.	600,000
RBC Dain Rauscher Inc.	600,000
Charles Schwab & Co., Inc.	600,000
Banc of America Securities LLC	67,500
BB&T Capital Markets, A division of Scott & Stringfellow, Inc.	67,500
Bear, Stearns & Co. Inc.	67,500
Credit Suisse First Boston LLC	67,500
Deutsche Bank Securities Inc.	67,500
H&R Block Financial Advisors, Inc.	67,500
HSBC Securities (USA) Inc.	67,500
KeyBanc Capital Markets, A Division of McDonald Investments Inc.	67,500
Legg Mason Wood Walker, Incorporated	67,500
Lehman Brothers Inc.	67,500
Oppenheimer & Co. Inc.	67,500
Piper Jaffray & Co.	67,500
TD Waterhouse Investor Services, Inc.	67,500
Advest, Inc.	22,500
Crowell, Weedon & Co.	22,500
D.A. Davidson & Co.	22,500
Davenport & Company LLC	22,500
First Southwest Company	22,500
Huntleigh Securities Corporation	22,500
Hutchinson, Shockey, Erley & Co.	22,500
Janney Montgomery Scott LLC	22,500
J.J.B. Hilliard, W.L. Lyons, Inc.	22,500
Keefe, Bruyette & Woods, Inc.	22,500
McGinn, Smith & Co., Inc.	22,500
Mesirow Financial, Inc.	22,500
Miller Johnson Steichen Kinnard, Inc.	22,500
Morgan Keegan & Company, Inc.	22,500
Pershing LLC	22,500
Raymond James & Associates, Inc.	22,500
Robert W. Baird & Co. Incorporated	22,500
Ryan Beck & Co., Inc.	22,500
Smith, Moore & Co.	22,500
Southwest Securities, Inc.	22,500
Sterne, Aggie & Leach, Inc.	22,500
Stephens Inc.	22,500

	<u>Underwriters' Commitment</u>
Stifel, Nicolaus & Company, Incorporated	22,500
SunTrust Capital Markets, Inc.	22,500
Wedbush Morgan Securities Inc.	22,500
William Blair & Company L.L.C.	22,500
B.C. Ziegler and Company	22,500
Total	\$12,000,000

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U.S. BANCORP
UNDERWRITING AGREEMENT
STANDARD PROVISIONS
(CAPITAL SECURITIES)

(August 3, 2005)

From time to time, U.S. Bancorp, a Delaware corporation (the "Guarantor"), and each of USB Capital VII ("USB VII"), USB Capital VIII ("USB VIII"), USB Capital IX ("USB IX"), USB Capital X ("USB X"), USB Capital XI ("USB XI"), USB Capital XII ("USB XII"), USB Capital XIII ("USB XIII"), USB Capital XIV ("USB XIV"), USB Capital XV ("USB XV") or USB Capital XVI ("USB XVI"), each a statutory business trust formed under the laws of the State of Delaware, may enter into one or more underwriting agreements (each such agreement, an "Underwriting Agreement") that provide for the sale of designated capital securities to the several underwriters (the "Underwriters") named therein.

The standard provisions hereof may be incorporated by reference in any Underwriting Agreement. As used herein, the term "Trust" means the statutory business trust named in the first sentence of the Underwriting Agreement. The term "Agreement" means the Underwriting Agreement, including the provisions hereof incorporated therein by reference. Unless otherwise defined herein, all other defined terms have the meanings ascribed thereto in the Underwriting Agreement.

I

The Guarantor and each of USB VII, USB VIII, USB IX, USB X, USB XI, USB XII, USB XIII, USB XIV, USB XV and USB XVI, severally and not jointly, issue from time to time, in one or more series, capital securities (the "Securities") pursuant to the provisions of the registration statement on Form S-3 filed on March 2, 2005 Registration No. 333-124535. Such Securities may be issued in amounts, at prices and other terms to be determined in light of market conditions at the time of sale. The specific number of the Securities, title and liquidation preference of each Security, issuance price, distribution rate or rates (or method of calculation), distribution periods, distribution payment dates, redemption provisions, and any other specific terms of the Securities shall be set forth in a prospectus supplement.

The Securities specified in Schedule I to the Underwriting Agreement are the "Firm Securities." If specified in such Underwriting Agreement, the Guarantor and the Trust may grant to the Underwriters the right to purchase at their election an additional number of the Securities specified in such Underwriting Agreement as provided in Article III hereof (the "Optional Securities"). The Firm Securities and the Optional Securities, if any, which the Underwriters elect to purchase pursuant to Article III hereof are herein collectively called the "Offered Securities."

The Guarantor and USB VII, USB VIII, USB IX, USB X, USB XI, USB XII, USB XIII, USB XIV, USB XV and USB XVI, have filed with the Securities and Exchange Commission (the "Commission") a registration statement in respect of the Securities, the Guarantee and the

Junior Subordinated Debentures (collectively, the “Registered Securities”), including a prospectus relating to the Registered Securities, and will file with, the Commission a prospectus supplement specifically relating to the Offered Securities pursuant to Rule 424 under the Securities Act of 1933, as amended (the “Securities Act”). The term “Registration Statement” means the registration statement as amended to the date of the Underwriting Agreement and includes any registration statement filed pursuant to Rule 462(b) under the Securities Act. The term “Basic Prospectus” means a prospectus included in the Registration Statement. The term “Prospectus” means the Basic Prospectus together with the prospectus supplement specifically relating to the Offered Securities (the “Prospectus Supplement”), as filed with, the Commission pursuant to Rule 424. The term “preliminary prospectus” means a preliminary prospectus supplement specifically relating to the Offered Securities together with the Basic Prospectus. As used herein, the terms “Registration Statement,” “Basic Prospectus,” “Prospectus” and “preliminary prospectus” shall include in each case the material, if any, incorporated by reference therein as of its effective time, in the case of the Registration Statement, and as of the date of such prospectus, in the case of any Basic Prospectus, Prospectus or preliminary prospectus. Any reference to any amendment or supplement to any Basic Prospectus, Prospectus or preliminary prospectus shall be deemed to refer to and include any document incorporated by reference after the date of such Basic Prospectus, Prospectus or preliminary prospectus, as the case may be. Any reference to any amendment to the Registration Statement shall be deemed to include any document incorporated by reference after the effective time of such Registration Statement.

II

The terms of the public offering of the Firm Securities are set forth in the Prospectus.

III

The Guarantor and the Trust may specify in the Underwriting Agreement applicable to any Securities that the Guarantor and the Trust thereby grant to the Underwriters the right (an “Overallotment Option”) to purchase at their election up to the number of Optional Shares set forth in such Underwriting Agreement, on the terms set forth in the paragraph above, for the sole purpose of covering over-allotments in the sale of the Firm Securities. Any such election to purchase Optional Securities may be exercised by written notice from each of the Representatives (as defined in the Underwriting Agreement) to the Guarantor and the Trust, given within a period specified in the Underwriting Agreement, setting forth the aggregate number of Optional Securities to be purchased and the date on which such Optional Securities are to be delivered, as determined by the Representatives but in no event earlier than the first Closing Date or, unless the Representatives, the Guarantor and the Trust otherwise agree in writing, earlier than or later than the respective number of business days after the date of such notice set forth in such Underwriting Agreement.

The number of Optional Securities to be added to the number of Firm Securities to be purchased by each Underwriter as set forth in Schedule I to the Underwriting Agreement applicable to such Securities shall be, in each case, the number of Optional Securities which the Guarantor has been advised by the Representatives have been attributed to such Underwriter; provided, that, if the Guarantor and the Trust have not been so advised, the number of Optional

Securities to be so added shall be, in each case, that proportion of Optional Securities which the number of Firm Securities to be purchased by such Underwriter under such Underwriting Agreement bears to the aggregate number of Firm Securities (rounded as the Representatives may determine to the nearest 10 shares). The total number of Offered Securities to be purchased by all Underwriters pursuant to such Underwriting Agreement shall be the aggregate number of Firm Securities set forth in Schedule I to such Underwriting Agreement plus the aggregate number of Optional Securities which the Underwriters elect to purchase.

IV

Payment for the Securities shall be made in federal (same day) funds at the time, date and place set forth in the Underwriting Agreement, upon delivery to the Representatives, through the facilities of The Depository Trust Company (“DTC”), for the respective accounts of the several Underwriters of the Securities. Each time and date of such payment and delivery of the Securities, including any payment and delivery pursuant to the exercise of the Overallotment Option by the Underwriters, is herein referred to as a “Closing Date.” The Trust will cause the certificates representing the Securities to be made available for checking and packaging at least one day prior to the Closing Date at the office of DTC or its designated custodian.

V

The several obligations of the Underwriters hereunder are subject to the condition that all representations and warranties and other statements of the Guarantor and the Trust in or incorporated by reference in the Underwriting Agreement are, at and as of each Closing Date, true and correct, the condition that the Guarantor and the Trust shall have performed all of their respective obligations hereunder theretofore to be performed, and to the following additional conditions:

(a) The Representatives shall have received on the Closing Date a certificate of the Administrative Trustees with respect to the Trust and a certificate of the Chairman, Vice Chairman, President or a Vice President of the Guarantor, each dated the Closing Date and to the effect (i) that there has been no downgrading, nor any notice given of any potential or intended downgrading, or of a possible change that does not indicate the direction of the possible change, in the rating accorded any of the Trust’s securities or the Guarantor’s securities by any nationally recognized statistical rating organization, (ii) that the representations and warranties of the Guarantor contained in Section VII are true and correct with the same force and effect as though expressly made at and as of the date of such certificate, (iii) that the Trust and the Guarantor have complied with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to the date of such certificate, and (iv) that no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been initiated or threatened by the Commission.

(b) The Representatives shall have received on the Closing Date an opinion of Squire, Sanders & Dempsey L.L.P., counsel to the Guarantor and the Trust, dated the Closing Date, and addressed to the Underwriters, to the effect set forth in Exhibit A.

(c) The Representatives shall have received on the Closing Date an opinion of the General Counsel of the Guarantor, and addressed to the Underwriters, dated the Closing Date, to the effect set forth in Exhibit B.

(d) The Representatives shall have received on the Closing Date an opinion of Simpson Thacher & Bartlett LLP, counsel to the Underwriters, dated the Closing Date, and addressed to the Representatives, relating to the incorporation of the Guarantor, the validity of the Offered Securities and the Underwriting Agreement, the Registration Statement, the Prospectus and other related matters as the Underwriters may reasonably request.

(e) The Representatives shall have received on the Closing Date an opinion of Squire, Sanders & Dempsey LLP, special tax counsel for the Trust and the Guarantor, dated the Closing Date and addressed to the Underwriters, to the effect set forth in Exhibit C.

(f) The Representatives shall have received on the Closing Date an opinion of Richards, Layton & Finger, P.A., special Delaware counsel for the Trust and the Guarantor, dated the Closing Date and addressed to the Underwriters, to the effect set forth in Exhibit D.

(g) At the time of execution of the applicable Underwriting Agreement, the Representatives shall have received a letter dated such date in form and substance satisfactory to the Representatives, from Ernst & Young LLP, to the effect set forth in Exhibit E.

(h) On the Closing Date, the Representatives shall have received from Ernst & Young LLP a letter, dated as of the Closing Date, to the effect that they reaffirm the statements made in the letter furnished pursuant to subsection (g) of this Article.

(i) On or prior to the Closing Date, Simpson Thacher & Bartlett LLP, counsel to the Underwriters, shall have been furnished with such documents and opinions as they may reasonably require for the purpose of enabling them to pass upon the issuance and sale of the Offered Securities as herein contemplated and related proceedings, or in order to evidence the accuracy and completeness of any of the representations and warranties, or the fulfillment of any of the conditions, herein contained; and all proceedings taken by the Guarantor and the Trust in connection with the issuance and sale of the Offered Securities as herein contemplated shall be satisfactory in form and substance to the Underwriters and Simpson Thacher & Bartlett LLP.

(j) Since the date of the latest audited financial statements incorporated by reference in the Prospectus, there shall not have been any material adverse change in the condition, financial or otherwise, of the Trust or of the Guarantor and its subsidiaries considered as one enterprise, or in the earnings, affairs or business prospects of the Trust or of the Guarantor and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business, other than as set forth in the Prospectus, and (ii) there shall not have occurred since the date of the applicable Underwriting Agreement any outbreak or escalation of hostilities or any material change in financial markets or other calamity or crisis the effect of which is such as to make it, in the judgment of the Representatives, impracticable or inadvisable to proceed with the public offering or the delivery of the Offered Securities on the terms and in the manner contemplated by the Prospectus, and (iii) trading in securities of the Guarantor as of the date of the Underwriting Agreement shall not have been suspended by the Commission or a national

securities exchange, nor shall trading generally on either the American Stock Exchange or the New York Stock Exchange have been suspended, or minimum or maximum prices for trading of securities generally have been fixed, or maximum ranges for prices for securities (other than trading limits currently in effect and other similar trading limits) have been required, or trading otherwise materially limited, by either of said exchanges or by order of the Commission or any other governmental authority, nor shall a banking moratorium have been declared by either Federal or New York authorities nor shall a banking moratorium have been declared by the relevant authorities in the country or countries of origin of any foreign currency or currencies in which the Securities are denominated or payable, and (iv) the rating assigned by any nationally recognized statistical rating organization to any debt securities of the Guarantor as of the date of the Underwriting Agreement shall not have been downgraded nor shall any notice have been given by any such nationally recognized statistical rating organization of any intended or potential downgrading or any review for possible change that does not indicate the direction of the possible change in such rating, and (v) the Prospectus, at the time it was required to be delivered to a purchaser of the Offered Securities, shall not have contained an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in light of the circumstances existing at such time, not misleading.

(k) The Representatives shall have received on the Closing Date a certificate of First Union Trust Company, National Association, as Guarantee, Property and Delaware Trustee and a certificate of Wilmington Trust Company, as Debenture Trustee.

(l) The Trust Agreement, the Guarantee and the Indenture shall have been duly authorized, executed and delivered, in each case in a form reasonably satisfactory to the Representatives.

(m) The Securities to be sold by the Trust at such time of delivery shall have been duly listed, subject to notice of issuance, on the New York Stock Exchange.

VI

In further consideration of the agreements of the Underwriters contained in the Underwriting Agreement, the Guarantor and the Trust, jointly and severally, covenant as follows:

(a) The Guarantor and the Trust will give the Representatives notice of their intention to file any amendment to the Registration Statement or any amendment or supplement to the Prospectus, whether by the filing of documents pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the Securities Act or otherwise. The Guarantor and the Trust will furnish the Representatives with copies of any such amendment or supplement or other documents, other than documents filed pursuant to the Exchange Act, proposed to be filed a reasonable time in advance of filing, and will furnish the Representatives with copies of documents filed pursuant to the Exchange Act promptly upon the filing thereof;

(b) The Guarantor and the Trust will promptly notify the Representatives immediately (i) of the filing and effectiveness of any amendment to the Registration Statement, (ii) of the mailing or the delivery to the Commission for filing of any supplement to the

Prospectus or any document to be filed pursuant to the Exchange Act which will be incorporated by reference in the Prospectus, (iii) of the receipt of any comments from the Commission with respect to the Registration Statement or the Prospectus or any amendment or supplement thereto, (iv) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Prospectus or for additional information, (v) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or the initiation or threat of initiation of any proceedings for that purpose, or (vi) of the suspension of qualification of the Offered Securities for offering or sale in any jurisdiction or the initiation or threat of initiation of any proceedings for that purpose. The Guarantor and the Trust will make every reasonable effort to prevent the issuance of any stop order or suspension of qualification and, if any stop order or suspension of qualification is issued, to obtain the lifting thereof at the earliest possible moment;

(c) If, during the period after the date of the first public offering of the Offered Securities when the Prospectus is required by law to be delivered, any event shall occur or condition exist as a result of which it is necessary, in the reasonable opinion of the counsel for the Underwriters or counsel for the Guarantor and the Trust, to further amend or supplement the Prospectus in order that the Prospectus will not include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein not misleading in the light of the circumstances existing at the time it is delivered to a purchaser, or if it shall be necessary, in the reasonable opinion of either such counsel, at any such time to amend or supplement the Registration Statement or the Prospectus in order to comply with the requirements of the Securities Act or the rules and regulations issued by the Commission thereunder, immediate notice shall be given, and confirmed in writing, to the Representatives, and the Guarantor and the Trust will promptly prepare and file with the Commission such amendment or supplement, whether by filing documents pursuant to the Exchange Act, the Securities Act or otherwise, as may be necessary to correct such untrue statement or omission or to make the Registration Statement comply with such requirements;

(d) The Guarantor and the Trust will make generally available to its security holders (as defined in Rule 158) as soon as practicable, but not later than 45 days after the close of each of the first three fiscal quarters of each fiscal year and 90 days after the close of each fiscal year, earnings statements (in form complying with the provisions of Rule 158 under the Securities Act) covering a twelve month period beginning not later than the first day of the fiscal quarter next following the effective date of the Registration Statement (as defined in Rule 158) with respect to each sale of Securities;

(e) The Guarantor and the Trust will deliver to the Representatives, without charge, as many signed and conformed copies of the Registration Statement (as originally filed) and of each amendment thereto (including exhibits filed therewith or incorporated by reference therein and documents incorporated by reference in the Prospectus) as the Representatives may reasonably request. The Guarantor and the Trust will furnish to the Representatives as many copies of the Prospectus (as amended or supplemented) as the Representatives shall reasonably request so long as the Underwriters are required to deliver a Prospectus in connection with the offering or sale of the Offered Securities;

(f) The Guarantor and the Trust will endeavor, in cooperation with the Representatives, to qualify the Offered Securities for offering and sale under the applicable securities laws of such states and other jurisdictions of the United States as the Representatives may designate, and will maintain such qualifications in effect for as long as may be required for the distribution of the Offered Securities; provided, however, that neither the Guarantor nor the Trust shall be obligated to file any general consent to service of process or to qualify as a foreign corporation in any jurisdiction in which it is not so qualified. The Guarantor and the Trust will file such statements and reports as may be required by the laws of each jurisdiction in which the Securities have been qualified as above provided;

(g) The Guarantor, during the period when the Prospectus is required to be delivered under the Securities Act, will file promptly all documents required to be filed with the Commission pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act;

(h) During the period of 30 days from the date of the Underwriting Agreement, the Guarantor and Trust will not offer, sell, contract to sell or otherwise dispose of any Securities, any other beneficial interest in the assets of the Trust, or any other securities of the Trust or any other similar trust which are substantially similar to the Offered Securities, including any guarantee of such securities, or any junior subordinated debentures of the Guarantor issued to the Trust or other similar trust, or any securities convertible into or exchangeable for or representing the right to receive Securities, or any such substantially similar securities of the Trust or any other similar trust, or any junior subordinated debentures of the Guarantor issued to the Trust or other similar trust, without the prior written consent of the Representatives;

(i) The Guarantor will issue the Guarantee and the Junior Subordinated Debentures concurrently with the issue and sale of the Offered Securities as contemplated herein;

(j) The Guarantor will use the net proceeds received by it from the sale of the Junior Subordinated Debentures, and to cause the Trust to use the net proceeds received by the Trust from the sale of Offered Securities pursuant to the Underwriting Agreement, in the manner specified in the Prospectus under the caption "Use of Proceeds," and to further cause the Trust to comply with the provisions of this Article VI that are applicable to it, including paragraph (h);

(k) The Guarantor and the Trust will use their best efforts to list, subject to notice of issuance, the Offered Securities on the New York Stock Exchange;

(l) To prepare the Prospectus as amended and supplemented in relation to the applicable Offered Securities in a form approved by the Representatives and to file such Prospectus pursuant to Rule 424(b) under the Securities Act in the manner and within the time period required by Rule 424(b), and to make no further amendment or any supplement to the Registration Statement or Prospectus after the date of the Underwriting Agreement relating to such Offered Securities and prior to any Closing Date for such Offered Securities which shall be disapproved by the Representatives for such Offered Securities promptly after reasonable notice thereof.

Each of the Guarantor and the Trust jointly and severally represents and warrants to each Underwriter that:

(a) The Registration Statement has been filed with the Commission in the form heretofore delivered or to be delivered to the Representatives and, excluding exhibits to the Registration Statement, but including all documents incorporated by reference in the Basic Prospectus, to the Representatives for each of the other Underwriters and the Registration Statement in such form has been declared effective by the Commission and no stop order suspending the effectiveness of the Registration Statement has been issued and no proceeding for that purpose has been initiated or threatened by the Commission. The Company meets the requirements for use of Form S-3;

(b) The documents incorporated by reference in the Prospectus, at the time they were or hereafter are filed with the Commission, complied or will comply in all material respects with the requirements of the Exchange Act and the rules and regulations of the Commission thereunder, and when read together and with the other information in the Prospectus, at the time the Registration Statement became, and any amendments thereto become, effective, and as of the Closing Date, did not and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were or are made, not misleading;

(c) The Registration Statement and the Prospectus, at the time the Registration Statement and each part thereof became or hereafter become effective, complied and any amendments or supplements thereto will comply, in all material respects with the requirements of the Securities Act and the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act") and the rules and regulations of the Commission thereunder. The Registration Statement at the time the Registration Statement and each part thereof became effective did not and as of the Closing Date will not, contain an untrue statement of any material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The Prospectus, as of the date it was filed with the Commission did not, and as of the Closing Date will not, contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that this representation and warranty shall not apply to any statements or omissions made in reliance upon and in conformity with information relating to an Underwriter furnished in writing to the Guarantor or the Trust by such Underwriter of Offered Securities through the Representatives expressly for use in the Prospectus as amended or supplemented relating to such Offered Securities or to that part of the Registration Statement constituting the Statement of Eligibility and Qualification under the Trust Indenture Act (Form T-1) of the Trustee;

(d) The Guarantor has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware, is duly registered as a bank holding company under the Bank Holding Company Act of 1956, as amended, with corporate power and authority to own, lease and operate its properties and conduct its business as described in the Registration Statement; and the Guarantor is duly qualified as a foreign corporation to transact

business and is in good standing in each jurisdiction in which its ownership or lease of substantial properties or the conduct of its business requires such qualification, except where the failure to do so to qualify or to be in good standing would not result in a Material Adverse Effect (as hereinafter defined);

(e) U.S. Bank National Association, the Guarantor's principal subsidiary bank, has been duly incorporated and is validly existing as a national banking association in good standing under the laws of the United States and has corporate power and authority to own, lease and operate its properties and conduct its business as described in the Registration Statement; all of the issued and outstanding capital stock of such bank has been duly authorized and validly issued and is fully paid and, except as provided in 12 U.S.C. Section 55, non-assessable; and 100% of its capital stock, other than any director's qualifying shares, is owned by the Guarantor, directly or through subsidiaries, free and clear of any mortgage, pledge, lien, encumbrance, claim or equity;

(f) Each of the Guarantor and its subsidiaries maintains a system of internal accounting controls sufficient to provide reasonable assurance that (A) the 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 GAAP 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. The Guarantor has established and maintains disclosure controls and procedures (as defined in Rules 13a-14 and 15d-14 under the Exchange Act) and such controls and procedures are effective in ensuring that material information relating to the Guarantor, including its subsidiaries, is made known to the principal executive officer and the principal financial officer. The Guarantor has utilized such controls and procedures in preparing and evaluating the disclosures in the Registration Statement and Prospectus;

(g) The authorized capitalization of the Guarantor is as set forth in the Prospectus, and the shares of issued and outstanding capital stock set forth thereunder have been duly authorized and validly issued and are fully paid and non-assessable;

(h) The Trust has been duly created and is validly existing as a statutory business trust in good standing under the Trust Agreement and the Business Trust Act of the State of Delaware and has the trust power and authority to own its properties and conduct its business as described in the Prospectus, and the Trust has conducted no business to date, and it will conduct no business in the future that would be inconsistent with the description of the Trust set forth in the Prospectus; the Trust is not a party to or bound by any agreement or instrument other than the Underwriting Agreement, the Trust Agreement and the agreements and instruments contemplated by the Trust Agreement; the Trust has no liabilities or obligations other than those arising out of the transactions contemplated by the Underwriting Agreement and the Trust Agreement and described in the Prospectus; based on expected operations and current law, the Trust is not and will not be classified as an association taxable as a corporation for United States federal income tax purposes; and the Trust is not a party to or subject to any action, suit or proceeding of any nature.

(i) The Offered Securities have been duly authorized by the Trust Agreement and, when issued and delivered in accordance with the terms of the Underwriting Agreement, the Trust Agreement and the Prospectus, will be validly issued and, subject to the qualifications set forth herein, fully paid and nonassessable undivided beneficial interests in the assets of the Trust under the Trust Agreement and the Delaware Business Trust Act and will conform to the description of the Offered Securities contained in the Prospectus; the issuance of the Offered Securities is not subject to any preemptive or other similar rights; the Offered Securities will have the rights set forth in the Trust Agreement; and the holders of Offered Securities, as beneficial owners of the Trust, 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, provided that the holders of Offered Securities may be obligated, pursuant to the Trust Agreement, (a) to provide indemnity and/or security in connection with any taxes or governmental charges arising from transfers or exchanges of Capital Securities Certificates (as defined in the Trust Agreement) and the issuance of replacement Capital Securities Certificates and (b) to provide security and indemnity in connection with requests of or directions to the Property Trustee (as defined in the Trust Agreement) to exercise its rights and remedies under the Trust Agreement.

(j) The Common Securities of the Trust to be sold to the Guarantor have been duly authorized by the Trust Agreement, and, when issued in accordance with the terms of the Trust Agreement and delivered to the Guarantor against payment therefor as described in the Prospectus, will represent validly issued undivided beneficial interests in the assets of the Trust and will conform to the description thereof contained in the Prospectus; the issuance of the Common Securities is not subject to 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 Guarantor free and clear of any security interest, mortgage, pledge, lien, encumbrance, claim or equity.

(k) The Guarantee, the Junior Subordinated Debentures and the Indenture (the Guarantee, the Junior Subordinated Debentures, the Trust Agreement and the Indenture being collectively referred to as the “Guarantor Agreements”) have each been duly authorized and when validly executed and delivered by the Guarantor will constitute valid and legally binding obligations of the Guarantor, enforceable in accordance with their respective terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, moratorium, reorganization, arrangement, liquidation, conservatorship, readjustment of debt, fraudulent transfer and other similar laws affecting the rights of creditors generally; and (ii) the discretion of any court of competent jurisdiction in awarding equitable remedies, including, without limitation, acceleration, specific performance or injunctive relief, and the effect of general principles of equity embodied in Minnesota, Delaware and New York statutes and common law. The Junior Subordinated Debentures are entitled to the benefits of the Indenture; and the Guarantor Agreements will conform to the descriptions thereof in the Prospectus.

(l) The Trust Agreement has been duly authorized and when validly executed and delivered by the Guarantor and the Administrative Trustees as of the Closing Date will constitute a valid and binding obligation of the Guarantor and the Administrative Trustees, enforceable in accordance with its terms, subject to the effect upon the Trust Agreement of (i) bankruptcy, insolvency, moratorium, receivership, reorganization, liquidation, fraudulent conveyance or

transfer and other similar laws relating to or affecting the rights and remedies of creditors generally, (ii) principles of equity, including applicable law relating to fiduciary duties (regardless of whether considered and applied in a proceeding in equity or at law), and (iii) the effect of applicable public policy on the enforceability of provisions relating to indemnification or contribution.

(m) The execution and delivery by the Trust of, and the performance by the Trust of its obligations under, the Underwriting Agreement and the Trust Agreement do not violate (A) the Trust Agreement or the Certificate of Trust of the Trust, (B) any applicable Delaware law, rule or regulation or (C) any provision of applicable law of the United States; will not contravene any provision of applicable law, the Trust Agreement, the certificate of incorporation or bylaws of the Guarantor or articles of association or bylaws of U.S. Bank National Association or any agreement or other instrument binding upon the Trust, the Guarantor or U.S. Bank National Association that is material to the Trust or to the Guarantor and its subsidiaries, taken as a whole, or any judgment, order or decree of any governmental body, agency or court having jurisdiction over the Trust; and no consent, approval, authorization, order, license, certificate, permit, registration or qualification of, or with, any governmental or regulatory body is required for the performance by the Trust of its obligations under the Underwriting Agreement or the Trust Agreement, except such as may be required by the securities or Blue Sky laws of the various states in connection with the offer and sale of the Offered Securities and Common Securities.

(n) The execution and delivery by the Guarantor of, and the performance by the Guarantor of its obligations under the Underwriting Agreement and the Guarantor Agreements, will not contravene any provision of applicable law, the Trust Agreement, the certificate of incorporation or bylaws of the Guarantor or articles of association or bylaws of U.S. Bank National Association or any agreement or other instrument binding upon the Guarantor or U.S. Bank National Association that is material to the Guarantor and its subsidiaries, taken as a whole, or any judgment, order or decree of any governmental body, agency or court having jurisdiction over the Guarantor or any subsidiary; and no consent, approval, authorization or order of, or qualification with, any governmental or regulatory body is required for the performance by the Guarantor of its obligations under the Underwriting Agreement or the Guarantor Agreements, except such as may be required by the securities or Blue Sky laws of the various states in connection with the offer and sale of the Junior Subordinated Debentures.

(o) Neither the Trust, the Guarantor nor U.S. Bank National Association is in violation of its organizational documents or in default in the performance or observance of any obligation, agreement, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which it is a party or by which it or any of its properties may be bound, which violation or default would be material to the Trust or to the Guarantor and its subsidiaries taken as a whole.

(p) The statements set forth in the Basic Prospectus under the captions "About U.S. Bancorp," "About the Trusts," "Description of Junior Subordinated Debt Securities," "Description of Capital Securities," "Description of the Guarantee," "Plan of Distribution" and the statements set forth in the Prospectus Supplement under the captions "U.S. Bancorp," "USB Capital VI," "Certain Terms of the Capital Securities," "Certain Terms of the Junior Subordinated Debentures," "Relationship Among the Capital Securities, the Junior Subordinated

Debentures and the Guarantee,” “United States Federal Income Tax Consequences,” “Underwriting” and such other sections as may be identified in the Underwriting Agreement, are accurate, complete and fair.

(q) The Trust is not, and after giving effect to the offering and sale of the Offered Securities and the application of the proceeds thereof as described in the Prospectus will not be, an “investment company” that is required to be registered under the Investment Company Act of 1940, as amended, and the Guarantor is not, and after giving effect to the issuance of the Junior Subordinated Debentures and the application of the proceeds thereof as described in the Prospectus will not be an “investment company” that is required to be registered under the Investment Company Act of 1940, as amended.

(r) Each of the Trust, the Guarantor and the subsidiaries of the Guarantor own or possess or have obtained all material governmental licenses, permits, consents, orders, approvals and other authorizations necessary to lease or own, as the case may be, and to operate their respective properties and to carry on their respective businesses as presently conducted;

(s) Each of the Trust, the Guarantor and the subsidiaries of the Guarantor own or possess adequate trademarks, service marks and trade names necessary to conduct the business now operated by them, and neither the Trust, the Guarantor nor any of the subsidiaries of the Guarantor has received any notice of infringement of or conflict with asserted rights of others with respect to any trademarks, service marks or trade names which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would materially adversely affect the conduct of the business, operations, financial condition or income of the Trust or of the Guarantor and its subsidiaries considered as one enterprise;

(t) There is no action, suit or proceeding before or by any court or governmental agency or body, domestic or foreign, now pending, or, to the knowledge of the Trust or the Guarantor, threatened against or affecting, the Trust or the Guarantor or any of the subsidiaries of the Guarantor, which might result in any material adverse change in the condition, financial or otherwise, of the Trust or the Guarantor and the subsidiaries of the Guarantor considered as one enterprise, or in the business prospects of the Guarantor and the subsidiaries of the Guarantor considered as one enterprise, or might materially and adversely affect the properties or assets thereof or might materially and adversely affect the consummation of this Agreement and the consummation of the transactions contemplated hereby; and there are no material contracts or documents of the Trust or the Guarantor or any of the subsidiaries of the Guarantor which are required to be filed as exhibits to the Registration Statement by the Securities Act or by the rules and regulations of the Commission thereunder which have not been so filed;

(u) No labor dispute with the employees of the Guarantor or any of its subsidiaries exists or, to the knowledge of the Guarantor, is imminent;

(v) The accountants who certified the financial statements, Guarantor management’s assessment of internal controls, and the Guarantor’s internal controls included or incorporated by reference in the Prospectus is an independent registered public accounting firm as required by the Securities Act and the Exchange Act and the rules and regulations issued by the Commission thereunder;

(w) The financial statements of the Guarantor and its consolidated subsidiaries included or incorporated by reference in the Prospectus comply as to form in all material respects with the requirements of the Securities Act and the Exchange Act and present fairly the financial position of the Guarantor and its consolidated subsidiaries as at the dates indicated and the results of their operations for the periods specified; except as stated therein, said financial statements have been prepared in conformity with generally accepted accounting principles applied on a consistent basis; and the pro forma financial information, and the related notes thereto, included or incorporated by reference to the Prospectus has been prepared in accordance with the applicable requirements of the Securities Act and the Exchange Act and the rules and regulations issued by the Commission thereunder;

(x) Since the respective dates as of which information is given in the Registration Statement and the Prospectus, except as otherwise stated therein or contemplated thereby, (A) there has been no material adverse change in the condition, financial or otherwise, of the Trust or the Guarantor and the subsidiaries of the Guarantor considered as one enterprise or in the earnings, affairs or business prospects of the Trust or the Guarantor and the subsidiaries of the Guarantor considered as one enterprise, whether or not arising in the ordinary course of business (a "Material Adverse Effect"), and (B) there have been no material transactions entered into by the Trust or the Guarantor, or any of the subsidiaries of the Guarantor other than those in the ordinary course of business;

(y) This Agreement has been duly authorized, executed and delivered by the Guarantor and the Trust;

(z) Immediately prior to the closing of the transactions contemplated hereby on each Closing Date, the Guarantor will have good and valid title to the Offered Securities to be sold by it hereunder, free and clear of all liens, encumbrances, equities or claims; and upon delivery of the Offered Securities and payment therefor pursuant hereto, good and valid title to the Offered Securities, free and clear of all liens, encumbrances, equities or claims, will pass to the several Underwriters; and

(aa) Neither the Guarantor nor any of its affiliates, as such term is defined in Rule 501(b) under the Securities Act (each, an "Affiliate") has taken, nor will the Guarantor or any Affiliate take, directly or indirectly, any action which is designed to or which has constituted or which would be expected to cause or result in stabilization or manipulation of the price of any security of the Guarantor to facilitate the sale or resale of the Offered Securities.

VIII

(a) The Guarantor and the Trust agree, jointly and severally, to indemnify and hold harmless each Underwriter and each person, if any, who controls such Underwriter (each an "Indemnified Person") within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever arising out of any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto), or the omission or

alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading or arising out of any untrue statement or alleged untrue statement of a material fact contained in the Prospectus (or any amendment or supplement thereto or any related preliminary prospectus or preliminary prospectus supplement) or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, unless such untrue statement or omission was made in reliance upon and in conformity with written information relating to such Indemnified Person furnished to the Guarantor or the Trust by the Representatives expressly for use in the Registration Statement (or any amendment thereto) or the Prospectus (or any amendment or supplement thereto or any related preliminary prospectus or preliminary prospectus supplement);

(ii) against any and all loss, liability, claim, damage and expense whatsoever to the extent of the aggregate amount paid in settlement of any litigation, or investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission (except as made in reliance upon and in conformity with information relating to such Indemnified Person furnished by the Representatives as aforesaid) if such settlement is effected with the written consent of the Guarantor or the Trust (which consent shall not be unreasonably withheld or delayed); and

(iii) against any and all expense whatsoever (including the fees and disbursements of counsel chosen by such Indemnified Person), as incurred, reasonably incurred in investigating, preparing or defending against any litigation, or investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission (except as made in reliance upon and in conformity with information relating to such Indemnified Person furnished by the Representatives as aforesaid), to the extent that any such expense is not paid under (i) or (ii) above.

(b) Each Underwriter, severally and not jointly, will indemnify and hold harmless the Guarantor and the Trust, each of their respective directors or trustees, each of their officers who signed the Registration Statement, and each person, if any, who controls the Guarantor or the Trust within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act against any and all loss, liability, claim, damage and expense described in the indemnity contained in subsection (a) of this Section, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendment thereto) or the Prospectus (or any amendment or supplement thereto or any related preliminary prospectus or preliminary prospectus supplement) in reliance upon and in conformity with written information relating to such Underwriter furnished to the Guarantor or the Trust by the Representatives expressly for use in the Registration Statement (or any amendment thereto) or the Prospectus (or any amendment or supplement thereto or any related preliminary prospectus or preliminary prospectus supplement).

(c) Each indemnified party shall give prompt notice to each indemnifying party of any action commenced against it in respect of which indemnity may be sought hereunder but

failure to so notify an indemnifying party shall not relieve it from any liability which it may have otherwise than on account of this indemnity agreement. An indemnifying party may participate at its own expense in the defense of such action. In no event shall the indemnifying parties be liable for the fees and expenses of more than one counsel (in addition to any local counsel) for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances; provided, however, that when more than one of the Underwriters is an indemnified party each such Underwriter shall be entitled to separate counsel (in addition to any local counsel) in each such jurisdiction to the extent such Underwriter may have interests conflicting with those of the other Underwriter or Underwriters because of the participation of one Underwriter in a transaction hereunder in which the other Underwriter or Underwriters did not participate. 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.

(d) In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in this Section VIII is for any reason held to be unavailable to the Underwriters in accordance with its terms, the Guarantor, the Trust and the Underwriters shall contribute to the aggregate losses, liabilities, claims, damages and expenses of the nature contemplated by said indemnity agreement incurred by the Guarantor and the Trust on the one hand and the Underwriters on the other with respect to Securities sold to the Underwriters in such proportions as is appropriate to reflect the relative benefits received by the Guarantor and the Trust on the one hand and the Underwriters on the other. The relative benefits received by the Guarantor and the Trust on the one hand and the Underwriters on the other shall be deemed to be in such proportion represented by the percentage that the total commissions and underwriting discounts received by the Underwriters to the date of such liability bears to the total sales price (before deducting expenses) received by the Trust from the sale of the Offered Securities made to the Underwriters to the date of such liability, and the Guarantor and the Trust are responsible for the balance. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law or if the Underwriters failed to give the notice required under (c), then the Guarantor and the Trust on the one hand and the Underwriters on the other shall contribute to such aggregate losses, liabilities, claims, damages and expenses in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Guarantor and the Trust on the one hand and the Underwriters on the other in connection with the statements or omissions which resulted in such liabilities, claims, damages and expenses, as well as any other relevant equitable considerations. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Guarantor and the Trust or the Representatives and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Guarantor, the Trust and the Underwriters agree that it would not be just and equitable if contributions pursuant to this paragraph were determined pro rata (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 this paragraph. Notwithstanding the provisions of this paragraph, the Underwriters shall not be

required to contribute any amount in excess of the amount by which the total price at which the Securities referred to in the second sentence of this paragraph that were offered and sold to the public through the Underwriters exceeds the amount of any damages that the Underwriters have 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 under this paragraph to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section, 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 shall have the same rights to contribution as such Underwriter, and each director of the Guarantor, each trustee of the Trust, each officer of the Guarantor and the Trust who signed the Registration Statement, and each person, if any, who controls the Guarantor or the Trust within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act shall have the same rights to contribution as the Guarantor and the Trust.

IX

The indemnity and contribution agreements contained in Section VIII hereof and the representations and warranties of the Guarantor and the Trust in this Agreement or in any certificate submitted pursuant hereto shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by any Underwriter or on behalf of any Underwriter or any person controlling any Underwriter or by or on behalf of the Guarantor and the Trust or each of their respective directors or trustees or each of their officers or any person controlling the Guarantor and the Trust and (iii) acceptance of any payment for any of the Offered Securities, if any.

X

If any Underwriter shall default in its obligation to purchase the Offered Securities, which it has agreed to purchase hereunder, the Representatives may in their discretion arrange for themselves or another party or other parties to purchase such Offered Securities on the terms contained herein. If within thirty-six hours after such default by any Underwriter the Representatives do not arrange for the purchase of such Offered Securities then the Guarantor and the Trust shall be entitled to a further period of thirty-six hours within which to procure another party or other parties satisfactory to the Representatives to purchase such Offered Securities on such terms. In the event that, within the respective prescribed period, the Representatives notify the Guarantor and the Trust that they have so arranged for the purchase of such Offered Securities or the Guarantor or the Trust notify the Representatives that it has so arranged for the purchase of such Offered Securities, the Representatives, the Guarantor or the Trust shall have the right to postpone the Closing Date for a period of not more than seven days, in order to effect whatever changes may thereby be made necessary in the Registration Statement or the Prospectus, or in any other documents or arrangements, and the Guarantor and the Trust agree to file promptly any amendments or supplements to the Registration Statement or the Prospectus which in the reasonable opinion of the Representatives may thereby be made necessary. The term "Underwriters" as used in this Agreement shall include any person substituted under this Section X with like effect as if such person had originally been a party to this Agreement with respect to such Offered Securities.

If, after giving effect to any arrangements for the purchase of the Offered Securities of a defaulting Underwriter or Underwriters by the Representatives and the Guarantor and the Trust as provided in the immediately preceding paragraph hereof, the aggregate principal amount of such Offered Securities which remains unpurchased does not exceed one-eleventh of the aggregate principal amount of all the Offered Securities then the Guarantor and the Trust shall have the right to require each non-defaulting Underwriter to purchase the Offered Securities which such Underwriter agreed to purchase hereunder and, in addition, to require each non-defaulting Underwriter to purchase its pro rata share (based on the principal amount of Offered Securities which such Underwriter agreed to purchase hereunder) of the Offered Securities of such defaulting Underwriter or Underwriters for which such arrangements have not been made; but nothing herein shall relieve a defaulting Underwriter from liability for its default.

If, after giving effect to any arrangements for the purchase of the Offered Securities of a defaulting Underwriter or Underwriters by the Representatives and the Guarantor and the Trust as provided in the first paragraph of this Section X, the aggregate principal amount of Offered Securities which remains unpurchased exceeds one-eleventh of the aggregate principal amount of all the Offered Securities or if the Guarantor and the Trust shall not exercise the right described in the immediately preceding paragraph to require non-defaulting Underwriters to purchase Offered Securities of a defaulting Underwriter or Underwriters, then this Agreement shall thereupon terminate, without liability on the part of any non-defaulting Underwriters, the Guarantor or the Trust, except for the expenses to be borne by the Guarantor, the Trust and the Underwriters as provided in Section XI hereof and the indemnity and contribution agreements in Section VIII hereof; but nothing herein shall relieve a defaulting Underwriter from liability for its default.

XI

The Guarantor covenants and agrees with the several Underwriters that the Guarantor will pay or cause to be paid the following: (i) the fees, disbursements and expenses of the Guarantor's and the Trust's counsel and accountants in connection with the registration of the Securities under the Securities Act and all other expenses in connection with the preparation, printing and filing of the Registration Statement and the Prospectus and amendments and supplements thereto and the mailing and delivering of copies thereof to the Underwriters and to dealers; (ii) the cost of printing this Agreement and any Blue Sky and legal investment memoranda; (iii) all expenses in connection with the qualification of the Offered Securities for offering and sale under state securities laws as provided in Section VI hereof, including the fees and disbursements of counsel in connection with such qualification and in connection with the preparation of any Blue Sky memorandum or any Blue Sky and legal investment surveys; (iv) any fees charged by securities rating services for rating the Securities; (v) the cost of preparing the Securities; (vi) the fees and expenses of the Trustee and any agent of the Trustee and the fees and disbursements of counsel for the Trustee in connection with the Indenture, the Trust Agreement and the Securities; (vii) the fees and expenses incident to any Overallotment Options which are not otherwise specifically provided for in this section; and (viii) all other costs and expenses incident to the performance of its obligations hereunder which are not otherwise specifically provided for in this Section XI. It is understood, however, that, except as provided in this Section XI and Sections VIII and XII hereof, the Underwriters will pay all of their own costs and expenses, including the fees of their counsel, transfer taxes on resale of any of the

Offered Securities by them and any advertising expenses connected with any offers they may make.

XII

If the Underwriting Agreement shall be terminated by the Underwriters or any of them, because of any failure or refusal on the part of the Guarantor or the Trust to comply with the terms or to fulfill any of the conditions of the Underwriting Agreement, or if for any reason the Guarantor or the Trust shall be unable to perform its obligations under the Underwriting Agreement except pursuant to Article X hereof, the Guarantor will reimburse the Underwriters or such Underwriters as have so terminated the Underwriting Agreement with respect to themselves, severally, for all out-of-pocket expenses (including the fees and disbursements of their counsel) reasonably incurred by such Underwriters in connection with the Offered Securities.

XIII

In all dealings hereunder, the Representatives of the Underwriters of Offered Securities shall act on behalf of each of such Underwriters, and the parties hereto shall be entitled to act and rely upon any statement, request, notice or agreement on behalf of any Underwriter made or given by such Representatives jointly or by such of the representatives, if any, as may be designated for such purpose hereunder.

All statements, requests, notices and agreements hereunder shall be in writing or by telegram if promptly confirmed in writing, and if to the Underwriters shall be sufficient in all respects if delivered or sent by registered mail to the address of the principal offices of the Representatives and if to the Guarantor or the Trust shall be sufficient in all respects if delivered or sent by registered mail to the address of the Guarantor set forth in the Underwriting Agreement, Attention: Treasurer; provided, however, that any notice to an Underwriter pursuant to Section VIII hereof shall be delivered or sent by registered mail to such Underwriter at its address set forth in its Underwriters' Questionnaire, or telex constituting such Underwriters' Questionnaire, which address will be supplied to the Guarantor by the Representatives upon request.

XIV

This Agreement shall be binding upon, and inure solely to the benefit of, the Underwriters, the Guarantor, the Trust and, to the extent provided in Section VIII hereof, the officers and directors of the Guarantor, the Trust and each person who controls the Guarantor or the Trust or any Underwriter, and their respective heirs, executors, administrators, successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement. No purchaser of any of the Offered Securities from any Underwriter shall be deemed a successor or assign by reason merely of such purchase.

XV

Time shall be of the essence of this Agreement.

This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

This Agreement and the rights and obligations of the parties created hereby shall be governed by the laws of the State of New York.

Opinion of Counsel for the Trust and the Guarantor

The opinion or opinions of Squire, Sanders & Dempsey L.L.P., counsel for the Trust and the Guarantor, to be delivered pursuant to Section V(b) of the Agreement, shall be to the following effect (all terms used herein which are defined in the Agreement have the meanings set forth therein):

- (i) The Guarantor has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware.
 - (ii) The Guarantor has corporate power and authority to own, lease and operate its properties and conduct its business as described in the Prospectus.
 - (iii) U.S. Bank National Association has been duly incorporated and is validly existing as a national banking association in good standing under the laws of the United States, and has corporate power and authority to own, lease and operate its properties and conduct its business as described in the Prospectus.
 - (iv) The Underwriting Agreement has been duly authorized, executed and delivered by the Guarantor and the Trust.
 - (v) Each of the Trust Agreement, the Indenture, and the Guarantee has been duly and validly authorized, executed and delivered by the Guarantor and constitutes a valid and binding agreement of the Guarantor, enforceable in accordance with its terms, subject to (A) applicable bankruptcy, insolvency reorganization, moratorium, fraudulent transfer and other similar laws affecting creditors' rights generally from time to time in effect, and (B) general principles of equity, regardless of whether considered in a proceeding in equity or at law and an implied covenant of good faith and fair dealing. Each of the Trust Agreement, the Guarantee and the Indenture has been duly qualified under the Trust Indenture Act.
 - (vi) The Junior Subordinated Debentures have been duly and validly authorized by all necessary corporate action and, when authenticated by the Debenture Trustee, executed, issued and delivered in the manner provided in the Indenture, will constitute valid and binding obligations of the Guarantor, entitled to the benefits of the Indenture and enforceable against the Guarantor in accordance with their terms, subject to (A) applicable bankruptcy, insolvency reorganization, moratorium, fraudulent transfer and other similar laws affecting creditors' rights generally from time to time in effect, and (B) general principles of equity, regardless of whether considered in a proceeding in equity or at law and an implied covenant of good faith and fair dealing.
 - (vii) The statements in the Basic Prospectus under the captions "Description of Junior Subordinated Debt Securities," "Description of Capital Securities," "Description of the Guarantee" and "Relationship among the Capital Securities, the Corresponding Junior Subordinated Debt Securities and the Guarantees" and the statements in the Prospectus Supplement under the captions "Certain Terms of the Capital Securities," "Certain Terms of the Junior Subordinated Debentures" and "Relationship Among the Capital Securities, the Junior Subordinated Debentures and the Guarantee," insofar as these statements are descriptions of
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contracts, agreements or other legal documents or describe federal statutes, rules and regulations, are in all material respects accurate summaries of the matters referred to therein.

(viii) The Exchange Act reports incorporated by reference into the Registration Statement (other than the financial statements and related schedules therein, as to which such counsel need express no opinion), when they were filed with the Commission, complied as to form in all material respects with the requirements of the Exchange Act, and the rules and regulations of the Commission thereunder; and such counsel has no reason to believe that any of such documents, when they were so filed, as of its date contained an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made when such documents were so filed, not misleading.

(ix) The Registration Statement, as of its effective date, and the Prospectus, as of its issue date (other than financial statements and related schedules therein, as to which such counsel need express no opinion), complied as to form in all material respects with the requirements of the Securities Act and the rules and regulations of the Commission thereunder.

(x) Neither the Trust nor the Guarantor is, and after giving effect to the application of proceeds from the offering of the Securities as contemplated in the Prospectus, will be, an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

(xi) No consent, approval, license, authorization, or order of any court or governmental authority or agency is required in connection with the issuance or sale of the Securities, the Junior Subordinated Debentures or the Guarantee, except such as may be required under state securities or Blue Sky laws.

(xii) No consent, approval, license, authorization, or order of any federal or Delaware court or federal or Delaware government authority or agency is required for the performance by the Trust and the Guarantor of their obligations under this Agreement or the consummation of the transactions contemplated hereby.

(xiii) To the best of such counsel's knowledge, there are no contracts, indentures, mortgages, loan agreements, notes, leases or other instruments required to be described or referred to in the Prospectus or filed as exhibits to the Registration Statement other than those described or referred to therein or incorporated by reference and the description thereof or references thereto are correct.

(xiv) The execution and delivery of the Underwriting Agreement, the Trust Agreement, the Guarantee, the Indenture, the issuance of the Guarantee and the Junior Subordinated Debentures, and the consummation of the transactions contemplated herein and therein, and the performance of the obligations hereunder and thereunder will not result in a violation of any federal or state law nor will such action result in any violation of the provisions of the charter or bylaws of the Guarantor.

(xv) The execution and delivery of the Underwriting Agreement by the Trust and the performance by the Trust of its obligations hereunder, the issuance and sale of the Securities and

the Common Securities by the Trust and the consummation of the other transactions contemplated hereby will not violate any provision of federal law or, to the best knowledge of such counsel, any agreement or instrument binding upon the Trust or any judgment, order or decree of any governmental body, agency or court having jurisdiction over the Trust, except such contravention as would not, individually or in the aggregate, have a material adverse effect on the condition (financial or other), business, properties, net worth or results of operations of the Trust.

(xvi) Upon payment for, and delivery of, the Securities to be sold by the Guarantor under the Underwriting Agreement in accordance with the terms hereof, the Underwriters will acquire all of the rights of the Guarantor in the Securities and will also acquire the interest of the Guarantor in the Securities free of any adverse claim (within the meaning of the Uniform Commercial Code), assuming that the Underwriters have no notice of any such adverse claim.

Such counsel shall also have furnished to the Representatives a written statement, addressed to the Underwriters and dated the Closing Date, in form and substance satisfactory to the Representatives, to the effect that (x) such counsel has acted as counsel to the Guarantor in connection with the preparation of the Registration Statement, the Prospectus and the documents incorporated by reference therein, and in the course of preparation of those documents such counsel has participated in conferences with representatives of the Guarantor and with representatives of Ernst & Young LLP and (y) based upon such counsel's examination of the Registration Statement, the Prospectus and the documents incorporated by reference therein, such counsel's investigations made in connection with the preparation of the Registration Statement, the Prospectus and the documents incorporated by reference therein and such counsel's participation in the conferences referred to above, such counsel has no reason to believe that (other than the financial statements, schedules and other financial data included therein as to which no statement need be rendered) the Registration Statement, as of its effective date and as of the date of the Annual Report on Form 10-K of the Guarantor for the fiscal year ended December 31, 2004 (including such documents incorporated by reference), contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or that the Prospectus (including such documents incorporated by reference), as of its date and as of the Closing Date, contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

Opinion of General Counsel of the Guarantor

The opinion of the General Counsel of the Guarantor, to be delivered pursuant to Section V(c) of the Agreement, shall be to the following effect (all terms used herein which are defined in the Agreement have the meanings set forth therein):

(i) The Guarantor is duly qualified to do business as a foreign corporation and is in good standing in each U.S. jurisdiction in which its ownership or lease of substantial properties or the conduct of its business requires such qualification, except where the failure so to qualify would not have a material adverse effect on the Guarantor and its subsidiaries, taken as a whole.

(ii) U.S. Bank National Association is lawfully able to transact business in each jurisdiction in which it owns or leases substantial properties or conducts business, except for the jurisdictions in which the failure to be lawfully able to conduct business would not have a material adverse effect on U.S. Bank National Association and its subsidiaries, taken as a whole.

(iii) There are no pending or, to the best of the knowledge of such counsel, overtly threatened lawsuits or claims against the Guarantor or its subsidiaries which are required to be disclosed in the Prospectus that are not disclosed as required.

(iv) To the best of the knowledge of such counsel, there are no legal or governmental proceedings pending or threatened against the Trust or to which the Trust or any of its property is subject, that are required to be described in the Prospectus that are not described as required and there are no agreements, contracts, indentures, leases or other instruments of the Trust that are required to be described in the Prospectus that are not described as required.

(v) The execution and delivery of the Underwriting Agreement, the Trust Agreement, the Guarantee, the Indenture, the issuance of the Guarantee and the Junior Subordinated Debentures, and the consummation of the transactions contemplated herein and therein, and the performance of the obligations thereunder will not conflict with or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Guarantor or any subsidiary pursuant to any contract, indenture, mortgage, loan agreement, note, lease or other instrument to which the Guarantor or any of its subsidiaries is a party or by which it or any of them may be bound or to which any of the property or assets of the Guarantor or any of its subsidiaries is subject and that is material to the Guarantor and its subsidiaries, taken as a whole.

Opinion of Special Tax Counsel of the Trust and the Guarantor

The statements set forth in the Prospectus under the caption “United States Federal Income Tax Consequences,” insofar as they purport to constitute summaries of matters of United States federal tax law and regulations or legal conclusions with respect thereto, constitute accurate summaries of the matters described therein in all material respects. In addition, the opinion or opinions of Squire, Sanders & Dempsey LLP, to be delivered pursuant to Section V(e) of the Agreement, shall confirm the opinions set forth in the Prospectus under the caption “United States Federal Income Tax Consequences.”

Opinion of Special Delaware Counsel for the Trust and the Guarantor

The opinion or opinions of Richards, Layton & Finger, P.A., special Delaware counsel for the Trust and the Guarantor, to be delivered pursuant to Section V(f) of the Agreement, shall be to the following effect (all terms used herein which are defined in the Agreement have the meanings set forth therein):

- (i) The Trust has been duly created and is validly existing in good standing as a business trust under the Delaware Business Trust Act, and all filings required under the laws of the State of Delaware with respect to the creation and valid existence of the Trust as a business trust have been made.
 - (ii) Under the Delaware Business Trust Act and the Trust Agreement, the Trust has the trust power and authority (A) to execute and deliver, and to perform its obligations under, the Underwriting Agreement, (B) to issue and perform its obligations under the Securities and the Common Securities and (C) to own its property and conduct its business, all as described in the Prospectus.
 - (iii) Under the Delaware Business Trust Act and the Trust Agreement, (A) the execution and delivery by the Trust of the Underwriting Agreement and the performance by the Trust of its obligations thereunder, have been duly authorized by all necessary trust action on the part of the Trust and (B) the Guarantor is authorized to execute and deliver the Underwriting Agreement on behalf of the Trust.
 - (iv) The Trust Agreement constitutes a valid and binding obligation of the Guarantor and each trustee of the Trust, and is enforceable against the Guarantor and each trustee of the Trust, in accordance with its terms.\
 - (v) The Common Securities have been duly authorized by the Trust Agreement and, when issued and delivered by the Trust to the Guarantor in exchange for the Junior Subordinated Debentures as described in the Prospectus, will be duly and validly issued and, subject to the qualifications set forth in this paragraph (v), will be fully paid undivided beneficial interests in the assets of the Trust. We note that the holder of the Common Securities may be obligated, pursuant to the Trust Agreement, (A) to provide indemnity and/or security in connection with and pay taxes or governmental charges arising from transfers or exchanges of the certificates representing the Common Securities and the issuance of replacement certificates representing the Common Securities, (B) to provide security or indemnity in connection with requests of or directions to the Property Trustee to exercise its rights and powers under the Trust Agreement and (C) will be liable for the debts and obligations of the Trust to the extent provided in Section 9.1 of the Trust Agreement.
 - (vi) The Securities have been duly authorized by the Trust Agreement and, when issued and delivered by the Trust to the Guarantor in exchange for the Junior Subordinated Debentures as described in the Prospectus, will be duly and validly issued and, subject to the qualifications set forth in this paragraph (vi), will be fully paid and nonassessable undivided beneficial interests in the assets of the Trust and will be entitled to the benefits of the Trust
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Agreement. The holders of the Securities, as beneficial owners of the Trust, 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. We note that such holders may be obligated, pursuant to the Trust Agreement, (A) to provide indemnity and/or security in connection with and pay taxes or governmental charges arising from transfers or exchanges of the certificates representing the Securities and the issuance of replacement certificates representing the Securities, and (B) to provide security or indemnity in connection with requests of or directions to the Property Trustee to exercise its rights and powers under the Trust Agreement.

(vii) Under the Delaware Business Trust Act and the Trust Agreement, (A) the issuance of the Securities and the Common Securities is not subject to preemptive or other similar rights and (B) the Trust is not authorized to issue any securities other than the Securities and the Common Securities.

(viii) The issuance and sale by the Trust of the Securities and the Common Securities, the execution, delivery and performance by the Trust of the Underwriting Agreement, the consummation by the Trust of the transactions contemplated thereby and compliance by the Trust with its obligations thereunder, (A) do not violate (I) any of the provisions of the Certificate of Trust of the Trust or the Trust Agreement or (II) any applicable Delaware law or administrative regulation thereunder which is applicable to the Trust, and (B) do not require any consent, approval, license, authorization or validation of, or filing or registration with, any Delaware legislative, administrative or regulatory body under the laws or administrative regulations of the State of Delaware.

(ix) Assuming that the Trust is treated as a grantor trust under the Internal Revenue Code of 1986, as amended, the holders of the Securities (other than those holders of Securities who reside or are domiciled in the State of Delaware) will have no liability for income taxes imposed by the State of Delaware solely as a result of their participation in the Trust, and the Trust will not be liable for any income tax imposed by the State of Delaware.

Letter from Ernst & Young LLP

The Letter of Ernst & Young LLP to be delivered pursuant to Section V(g) of the Agreement shall be to the following effect (all terms used herein which are defined in the Agreement have the meanings set forth therein):

(i) They are an independent registered public accounting firm with respect to the Guarantor and its subsidiaries within the meaning of the Securities Act, the Exchange Act and the applicable published rules and regulations thereunder.

(ii) In their opinion, the consolidated financial statements and schedules audited by them and their report on internal control and management's assessment thereof, in each case, included in the Prospectus comply as to form in all material respects with the applicable accounting requirements of the Securities Act, the Exchange Act, as applicable, and the published rules and regulations thereunder.

(iii) They have made a review of any unaudited consolidated financial statements included in the Prospectus in accordance with standards established by the American Institute of Certified Public Accountants, as indicated in their report or reports attached to such letter.

(iv) On the basis of the review referred to in (iii) and a reading of the latest available interim financial statements of the Guarantor and its consolidated subsidiaries, inspection of the minute books of the Guarantor and U.S. Bank National Association since the date of the balance sheet included in the Guarantor's most recent audited financial statements, inquiries of officials of the Guarantor responsible for financial and accounting matters and other procedures, nothing came to their attention that caused them to believe that the unaudited financial statements included in the Prospectus do not comply as to form in all material respects with the applicable accounting requirements of the Securities Act, the Exchange Act, and the published rules and regulations thereunder or that the unaudited financial statements are not presented in conformity with generally accepted accounting principles applied on a basis consistent in all material respects with that of the audited financial statements included in the Prospectus.

(v) They have performed specified procedures, not constituting an audit, including a reading of the latest available interim financial statements of the Guarantor and its consolidated subsidiaries, a reading of the minute books of the Guarantor and U.S. Bank National Association since the date of the balance sheet included in the Guarantor's most recent audited financial statements, inquiries of officials of the Guarantor responsible for financial and accounting matters and such other inquiries and procedures as may be specified in such letter, and on the basis of such inquiries and procedures nothing came to their attention that caused them to believe that:

(A) at the date of the latest available consolidated balance sheet read by such accountants, or at a subsequent specified date not more than five days prior to the date of delivery of such letter, there was any change in the capital stock of the Guarantor and its consolidated subsidiaries, any increase in long-term debt of the Guarantor and its consolidated subsidiaries or any decreases in allowance for credit loss or consolidated

common shareholders' equity of the Guarantor and its consolidated subsidiaries, in each case as compared with amounts shown in the most recent consolidated balance sheet included in the Prospectus, except in each case for changes, increases or decreases which the Prospectus discloses have occurred or may occur or which are described in such letter; or

(B) for the period from the date of the latest income statement included in the Prospectus to the closing date of the latest available income statement read by such accountants, there were any decreases, as compared with the corresponding period in the preceding year, in consolidated net income, consolidated net interest income before the provision for credit losses, consolidated net interest income after the provision for loan losses or in the ratio of earnings to fixed charges, except in each case for increases or decreases which the Prospectus discloses have occurred or may occur or which are described in such letter.

(vi) They have compared certain agreed dollar amounts (or percentages derived from such dollar amounts) and other financial information included in the Prospectus (in each case to the extent that such dollar amounts, percentages and other financial information are derived from the general accounting records of the Guarantor and its subsidiaries subject to the internal controls of the Guarantor's accounting system or are derived directly from such records by analysis or computation) with the results obtained from inquiries, a reading of such general accounting records and other procedures specified in such letter, and have found such dollar amounts, percentages and other financial information to be in agreement with such results, except as otherwise specified in such letter.

All financial statements and schedules included in material incorporated by reference into the Prospectus shall be deemed included in the Prospectus for purposes of this Exhibit E.

U.S. BANCORP

Up to \$309,278,375 5.875% Junior Subordinated Debentures due 2035

Officers' Certificate Pursuant
to Section 3.1 of the Indenture

Pursuant to authority expressly delegated by the Board of Directors of U.S. Bancorp (the "Company") by resolutions duly adopted by the Board of Directors, and pursuant to the Indenture referred to below, there is hereby established a series of Securities (as that term is defined in the Indenture) pursuant to Section 3.1 of the Junior Subordinated Indenture, dated as of April 28, 2005, as supplemented by the First Supplemental Indenture dated as of August 3, 2005, between the Company and Delaware Trust Company, National Association, as Trustee (the "Indenture"), the terms of which shall be as follows (capitalized terms not defined herein shall have the meanings assigned to them in the Indenture):

(1) The Securities of this series shall be known and designated as the "5.875% Junior Subordinated Debentures due 2035" of the Company (the "Debentures"). The Debentures initially shall be issued to USB Capital VII, a Delaware statutory trust (the "Trust"). The Trust Agreement for the Trust shall be the Second Amended and Restated Trust Agreement, dated as of August 15, 2005, among the Company, as Sponsor, Delaware Trust Company, National Association, as Delaware Trustee and Property Trustee, and the Administrative Trustees named therein (the "Trust Agreement"). The Guarantee will be issued pursuant to the Guarantee Agreement, dated as of August 15, 2005, between the Company and Delaware Trust Company, National Association, as Guarantee Trustee.

(2) The aggregate principal amount of Debentures which may be authenticated and delivered under the Indenture is \$309,278,375 (except for Debentures authenticated and delivered upon registration of transfer of, or exchange for, or in lieu of, other Debentures pursuant to Section 3.4, 3.5, 3.6, 9.6 or 11.6 of the Indenture).

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

(4) The principal amount of the Debentures shall be payable in full on August 15, 2035 subject to and in accordance with the provisions of the Indenture.

(5) The rate at which the Debentures shall bear interest will be 5.875% per annum; the date from which such interest shall accrue is August 15, 2005; the Interest Payment Dates (as defined in the Indenture) on which such interest shall be payable are August 15, November 15, February 15 and May 15 of each year, commencing November 15, 2005. Interest payments not paid when due will themselves accrue additional interest at the annual rate of 5.875% on the amount of unpaid interest, to the extent permitted by law, compounded quarterly. The amount of interest payable for any period will be

computed on the basis of a 360-day year comprised of twelve 30-day months. The amount of interest payable for any period shorter than a full quarterly period will be computed on the basis of a 30-day month and, for periods of less than a month, the actual number of days elapsed per 30-day month.

(6) Interest will be payable to the person in whose name a Debenture (or one or more Predecessor Debentures) is registered at the close of business on the Regular Record Date (as defined in the Indenture) next preceding the Interest Payment Date, except that, interest payable on the Stated Maturity of the principal of a Debenture shall be paid to the Person to whom principal is paid.

(7) Interest on the Debentures shall be subject to deferral to the extent and in the manner provided in Section 3.11 of the Indenture at any one time or from time to time for a period not exceeding twenty (20) consecutive quarterly periods.

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

(9) The Debentures are redeemable at the option of the Company, subject to the terms and conditions of Article XI of the Indenture, at 100% of their principal amount plus accrued and unpaid interest:

- in whole or in part, on one or more occasions at any time on or after August 15, 2010 or
- in whole at any time if certain changes occur in tax or investment company laws and regulations, or in the treatment of the Trust's 5.875% Trust Preferred Securities (the "Capital Securities") for bank regulatory capital purposes (each such event, a "Special Event").

If a Special Event has occurred and is continuing, and the Company cannot cure that event by some reasonable action, then the Company may redeem the Debentures within 90 days following the occurrence of the Special Event. A "Special Event" means the occurrence of a "Tax Event", a "Regulatory Capital Event" or an "Investment Company Event".

“Tax Event” means the receipt by the Company or the Trust of an opinion of tax counsel (which may be the Company’s counsel or counsel of an Affiliate but not an employee and must be reasonably acceptable to the Property Trustee) experienced in such matters, to the effect that, as a result of:

- any amendment to, or change (including any announced prospective change) in, the laws (or any regulations thereunder) of the United States or any political subdivision or taxing authority thereof or therein; or
- any court, governmental agency or regulatory authority interpreting or applying such laws or regulations,

there is more than an insubstantial risk that:

- the Trust is, or will be within 90 days of the date of such opinion, subject to United States federal income tax with respect to income received or accrued on the Debentures;
- interest payable by the Company on the Debentures is not, or within 90 days of the date of such opinion will not be, deductible, in whole or in part, by the Company, for United States federal income tax purposes; or
- the Trust is, or will be within 90 days of the date of such opinion, subject to more than a de minimis amount of other taxes, duties or other governmental charges.

“Regulatory Capital Event” means the reasonable determination by the Company that, as a result of:

- any amendment to, or change (including any announced prospective change) in, the laws or any applicable regulation of the United States or any political subdivision; or
- any official or administrative pronouncement or action or judicial decision for interpreting or applying such laws or regulations, which amendment or change is effective or pronouncement or decision is announced on or after the date of original issuance of the 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 thereof) as Tier 1 capital (or its then equivalent) for purposes of the capital adequacy guidelines of the Federal Reserve in effect and applicable to the Company.

“Investment Company Event” means the receipt by the Company and the Trust of an opinion of an independent counsel experienced in matters relating to investment companies, to the effect that, as a result of any:

- change in law or regulation; or
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- change in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority (a “Change in 1940 Act Law”),

the Trust is or will be considered an “investment company” that is required to be registered under the Investment Company Act of 1940, which Change in 1940 Act Law becomes effective on or after the date of original issuance of the Capital Securities.

(10) The Debentures shall not be subject to any sinking fund or analogous provisions.

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

(12) The subordination provisions of Article XIII of the Indenture shall apply.

(13) With respect to the Debentures, the following amendment to the Indenture shall apply:

The following language shall be added to the end of the definitions of “Senior and Subordinated Debt”:

“provided however, that Senior and Subordinated Debt shall not be deemed to include any obligations in respect of debt securities issued to any trust, or a trustee of such trust, partnership or other entity affiliated with the Company that is a financing entity of the Company in connection with the issuance by such financing entity of securities that are similar to the Capital Securities.”

IN WITNESS WHEREOF, the undersigned have executed this Officers' Certificate as of the 15th day of August, 2005.

By: /s/ Daryl N. Bible
Name: Daryl N. Bible
Title: Executive Vice President and Treasurer

By: /s/ Kenneth D. Nelson
Name: Kenneth D. Nelson
Title: Senior Vice President

SECOND AMENDED AND RESTATED TRUST AGREEMENT

By and Among

**U.S. BANCORP,
as Sponsor**

**DELAWARE TRUST COMPANY, NATIONAL ASSOCIATION,
as Property Trustee**

**DELAWARE TRUST COMPANY, NATIONAL ASSOCIATION,
as Delaware Trustee**

And

THE ADMINISTRATIVE TRUSTEES NAMED HEREIN

Dated as of August 15, 2005

USB CAPITAL VII

CROSS REFERENCE TABLE¹

Section of Trust Indenture Act of 1939, as amended	Section of Agreement
310(a)	6.3
310(b)	6.3(c); 6.3(d)
310(c)	Inapplicable
311(a)	2.2(b)
311(b)	2.2(b)
311(c)	Inapplicable
312(a)	2.2(a)
312(b)	2.2(b)
312(c)	Inapplicable
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)	3.9(b); 3.10(a)
315(b)	2.7(a)
315(c)	3.9(a)
315(d)	3.9(b)
316(a)	2.6; 7.5(b); 7.6(c)
316(b)	Inapplicable
316(c)	Inapplicable
317(a)	3.16
317(b)	Inapplicable
318(a)	2.1(c)

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.

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EXHIBITS

Exhibit A Form of Capital Security Certificate

Exhibit B Form of Common Security Certificate

SECOND AMENDED AND RESTATED TRUST AGREEMENT

This SECOND AMENDED AND RESTATED TRUST AGREEMENT (this "Trust Agreement"), dated as of August 15, 2005 is entered into by and among (i) U.S. BANCORP, a Delaware corporation (the "Sponsor"), (ii) DELAWARE TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as property trustee (in each such capacity, the "Property Trustee"), (iii) DELAWARE TRUST COMPANY, NATIONAL ASSOCIATION, as Delaware trustee (the "Delaware Trustee"), (iv) DAVID M. MOFFETT, an individual, DARYL N. BIBLE, an individual, and LEE R. MITAU, an individual, each of whose address is c/o U.S. Bancorp, 800 Nicollet Mall, Minneapolis, Minnesota 55402 (each an "Administrative Trustee" and collectively the "Administrative Trustees") (the Property Trustee, the Delaware Trustee and the Administrative Trustees referred to collectively as the "Trustees") and (v) the several Holders, as hereinafter defined.

RECITALS

WHEREAS, the Trustees and the Sponsor established USB Capital VII (the "Trust"), a statutory trust under the Delaware Statutory Trust Act (as defined, together with other capitalized terms, herein) pursuant to a Trust Agreement dated as of May 8, 2001, as amended and restated by the First Amended and Restated Trust Agreement dated as of April 28, 2005 (the "First Amended and Restated Trust Agreement"), and a Certificate of Trust (the "Certificate of Trust") filed with the Secretary of State of the State of Delaware on May 8, 2001;

WHEREAS, the sole purpose of the Trust shall be to issue and sell certain securities representing undivided beneficial interests in the assets of the Trust and invest the gross proceeds thereof in the Debentures issued by the Debenture Issuer and to engage in only those activities necessary or incidental thereto; and

WHEREAS, the parties hereto, by this Trust Agreement, amend and restate each and every term and provision of the First Amended and Restated Trust Agreement;

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

ARTICLE 1

INTERPRETATION AND DEFINITIONS

SECTION 1.1. Interpretation and Definitions.

Unless the context otherwise requires:

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

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

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

(d) all references in this Trust Agreement to Articles, Sections, Recitals and Exhibits are to Articles and Sections of, or Recitals and Exhibits to, this Trust Agreement unless otherwise specified;

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

(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:

“*Administrative Trustee*” means any Trustee other than the Property Trustee and the Delaware Trustee.

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

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

“*Beneficial Owners*” means, for Capital Securities represented by a Global Security, the Person who acquires an interest in the Capital Securities which is reflected on the records of the Depository through the Depository Participants.

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

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

“*Capital Security Certificate*” means a definitive certificate in fully registered form representing a Capital Security, substantially in the form of Exhibit A.

“*Certificate*” means a Common Security Certificate or a Capital Security Certificate.

“*Certificate of Trust*” has the meaning specified in the Recitals hereto.

“*Closing Date*” means the date on which the Capital Securities are issued and sold.

“*Code*” means the Internal Revenue Code of 1986, as amended from time to time, or any successor legislation. A reference to a specific section of the Code refers not only to such specific section but also to any corresponding provision of any federal tax statute enacted after the date of this Trust Agreement, as such specific section or corresponding provision is in effect on the date of application of the provisions of this Trust Agreement containing such reference.

“*Commission*” means the Securities and Exchange Commission or any successor thereto.

“*Common Securities Holder*” means U.S. Bancorp, or any successor thereto, in its capacity as purchaser and holder of all of the Common Securities issued by the Trust.

“*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 B hereto.

“*Corporate Trust Office*” means the principal office of the Property Trustee at which at any particular time its corporate trust business shall be administered, which office at the date of execution of this Trust Agreement is located at c/o 300 Delaware Avenue, 9th Floor, Wilmington, Delaware 19801.

“*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.

“*Debenture Issuer*” means U.S. Bancorp, or any successor thereto under the Indenture, in its capacity as issuer of the Debentures under the Indenture.

“*Debenture Issuer 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 any Affiliate thereof; or (d) any officer, employee or agent of the Trust or its Affiliates.

“*Debenture Trustee*” means Delaware Trust Company, National Association, in its capacity as trustee under the Indenture until a successor is appointed thereunder, and thereafter means such successor trustee.

“*Debentures*” means the series of debentures to be issued by the Debenture Issuer under the Indenture and held by the Property Trustee.

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

“*Delaware Trustee*” means the Trustee meeting the eligibility requirements set forth in Section 6.2.

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

“*Depository Participant*” means a member of, or participant in, the Depository.

“*Direct Action*” has the meaning specified in Section 3.8(e).

“*Distribution*” means a distribution payable to Holders of Securities in accordance with Section 7.2.

“*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, or any successor thereto.

“*Fiduciary Indemnified Person*” has the meaning set forth in Section 9.4(b).

“*Fiscal Year*” has the meaning specified in Section 10.1.

“*Global Security*” means a fully registered, global Capital Security Certificate.

“*Guarantee*” means the Guarantee Agreement, dated the date hereof, of the Sponsor in respect of the Securities.

“*Holder*” means any holder of Securities, as registered on the books and records of the Trust.

“*Indemnified Person*” means a Debenture Issuer Indemnified Person or a Fiduciary Indemnified Person.

“*Indenture*” means the Junior Subordinated Indenture, dated as of April 28, 2005, as supplemented by that First Supplemental Indenture dated as of August 3, 2005, between the Debenture Issuer and Delaware Trust Company, National Association, as Trustee, pursuant to which the Debentures are to be issued.

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

“*Investment Company*” means an investment company as defined in the Investment Company Act and the regulations promulgated thereunder.

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

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

“*Legal Action*” has the meaning specified in Section 3.6(g).

“*List of Holders*” has the meaning specified in Section 2.2(a).

“*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 accumulated and unpaid Distributions to the date upon which the voting percentages are determined) of all outstanding Securities of the relevant class.

“*New York Stock Exchange*” means the New York Stock Exchange, Inc. or any successor thereto.

“*Officers’ Certificate*” means, with respect to any Person, a certificate signed on behalf of such Person by two Authorized Officers of such Person. Any Officers’ Certificate delivered with respect to compliance with a condition or covenant provided for in this Trust Agreement 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; provided, that the term “Officers’ Certificate”, when used with reference to

Administrative Trustees who are natural persons shall mean a certificate signed by two or more of the Administrative Trustees which otherwise satisfies the foregoing requirements.

“*Paying Agent*” has the meaning specified in Section 3.8(h).

“*Payment Amount*” has the meaning specified in Section 7.2(c).

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

“*Property Account*” has the meaning specified in Section 3.8(c).

“*Property Trustee*” means the Trustee meeting the eligibility requirements set forth in Section 6.3.

“*Pro Rata*” means 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.

“*Quorum*” means a majority of the Administrative Trustees or, if there are only two Administrative Trustees, both of them.

“*Redemption/Distribution Notice*” has the meaning specified in Section 7.4(a).

“*Redemption Price*” means the amount for which the Securities will be redeemed, which amount will equal (i) the redemption price paid by the Debenture Issuer to repay or redeem, in whole or in part, the Debentures held by the Trust which shall include accumulated and unpaid Distributions on such Securities through the date of their redemption or (ii) such lesser amount as will be received by the Trust in respect of the Debentures so repaid or redeemed.

“*Regulatory Capital Event*” means the reasonable determination by the Sponsor that, as a result of (a) any amendment to, or change (including any announced prospective change) in, the laws (or any regulations thereunder) of the United States or (b) any official or administrative pronouncement or action or judicial decision for interpreting or applying such laws or regulations, which amendment or change is effective or such pronouncement or decision is announced on or after the date of original issuance of the Capital Securities, there is more than an insubstantial risk of impairment of the Sponsor’s ability to treat the Capital Securities (or any substantial portion thereof) as Tier 1 capital (or its then equivalent) for purposes of the capital adequacy guidelines of the Federal Reserve in effect and applicable to the Sponsor.

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

“*Responsible Officer*” means, with respect to the Property Trustee, any officer with direct responsibility for the administration of this Trust Agreement 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*” 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, a Regulatory Capital Event or an Investment Company Event.

“*Sponsor*” means U.S. Bancorp, a Delaware corporation, or any successor entity in a merger, consolidation, amalgamation or replacement by or conveyance, transfer or lease of its properties substantially as an entirety, in its capacity as sponsor of the Trust.

“*Successor Delaware Trustee*” has the meaning specified in Section 6.6(b).

“*Successor Entity*” has the meaning specified in Section 3.15(b)(i).

“*Successor Property Trustee*” has the meaning specified in Section 6.6(b).

“*Successor Security*” has the meaning specified in Section 3.15(b)(i)b.

“*Super Majority*” has the meaning specified in Section 2.6(a)(ii).

“*Tax Event*” means the receipt by the Sponsor or the Trust of an opinion of tax counsel (which may be the Sponsor’s counsel or counsel of an Affiliate but not an employee and which must be reasonably acceptable to the Property Trustee) experienced in such matters, to the effect that, as a result of (a) any amendment to, or change (including any announced prospective change) in, the laws (or any regulations thereunder) of the United States or any political subdivision or taxing authority thereof or therein, or (b) any court, governmental agency or regulatory authority interpreting or applying such laws or regulations, there is more than an insubstantial risk that (i) the Trust is, or will be within 90 days of the date of such opinion, subject to the United States federal income tax with respect to income received or accrued on the Debentures, (ii) interest payable by the Debenture Issuer on the Debentures is not, or within 90 days of the date of such opinion will not be, deductible, in whole or in part, by the Debenture Issuer for United States federal income tax purposes, or (iii) the Trust is, or will be within 90 days of the date of such opinion, subject to more than a de minimus amount of other taxes, duties or other governmental charges.

“*10% 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 10% or more of the aggregate liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accumulated 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).

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

“*Trust Enforcement Event*” in respect of the Securities means an Indenture Event of Default has occurred and is continuing in respect of the Debentures.

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

“*Trustee*” or “*Trustees*” means each Person who has signed this Trust Agreement as a trustee, so long as such Person shall continue as a trustee 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.

ARTICLE 2

TRUST INDENTURE ACT

SECTION 2.1. Trust Indenture Act; Application.

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

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

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

(d) The application of the Trust Indenture Act to this Trust Agreement shall not affect the Trust’s classification as a grantor trust for United States federal income tax purposes.

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 Property Trustee (i), except while the Capital Securities are represented by one or more Global Securities, at least five Business Days prior to the date for payment of

Distributions, a list, in such form as the Property 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 Trust of a written request from the Property Trustee for a List of Holders, as of a date no more than 15 days before such List of Holders is given to the Property Trustee; 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 Property Trustee by the Sponsor and the Administrative Trustees on behalf of the Trust. The Property 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 Property Trustee may destroy any List of Holders previously given to it on receipt of a new List of Holders.

(b) The Property Trustee shall comply with its obligations under, and shall be entitled to the benefits of, Sections 311(a), 311(b) and 312(b) of the Trust Indenture Act.

SECTION 2.3. Reports by the Property Trustee.

Within 60 days after May 15 of each year (commencing with the year of the first anniversary of the issuance of the Capital Securities), the Property Trustee shall provide to the Holders of the Capital 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 Property Trustee shall also comply with the requirements of Section 313(d) of the Trust Indenture Act.

SECTION 2.4. Periodic Reports to the Property Trustee.

Each of the Sponsor and the Administrative Trustees on behalf of the Trust shall provide to the Property Trustee such documents, reports and information as required by Section 314 of the Trust Indenture Act (if any) and the compliance certificate required by Section 314 of the Trust Indenture Act in the form, in the manner and at the times required by Section 314 of the Trust Indenture Act, but in no event later than 120 days after the end of each calendar year.

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 Property Trustee such evidence of compliance with any conditions precedent, if any, provided for in this Trust Agreement that relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. 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. Trust Enforcement Events; Waiver.

(a) 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 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 under the Trust Agreement shall also not be waivable; or

(ii) requires the consent or vote of the Holders of greater than a majority in principal amount of the Debentures (a "Super Majority") to be waived under the Indenture, the related Trust Enforcement Event under the Trust Agreement may only be waived by the vote or written consent of the Holders of at least the proportion in liquidation amount of the Capital Securities that the relevant Super Majority represents of the aggregate principal amount of the Debentures outstanding.

The foregoing provisions of this Section 2.6(a) shall be in lieu of Section 316(a)(1)(B) of the Trust Indenture Act and such Section 316(a)(1)(B) of the Trust Indenture Act is hereby expressly excluded from this Trust Agreement 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 Trust Agreement and the Capital Securities, but no such waiver shall extend to any subsequent or other 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 Trust Agreement 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 or written consent, on behalf of the Holders of all of the Common Securities, waive any past Trust Enforcement Event in respect of 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 under the Trust Agreement as provided below in this Section 2.6(b), the Trust Enforcement Event under the Trust Agreement shall also not be waivable; or

(ii) requires the consent or vote of a Super Majority to be waived under the Indenture, except where the Holders of the Common Securities are deemed to have waived such Trust Enforcement Event under the Trust Agreement as provided below in this Section 2.6(b), the Trust Enforcement Event under the Trust Agreement may only be waived by the vote or written consent of the Holders of at least the proportion in liquidation amount of the Common Securities

that the relevant Super Majority represents of the aggregate principal amount of the Debentures outstanding;

provided further, each Holder of Common Securities will be deemed to have waived any Trust Enforcement Event and all Trust Enforcement Events with respect to the Common Securities and the consequences thereof 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 Property 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 Property Trustee in accordance with the terms of the Securities. The foregoing provisions of this Section 2.6(b) shall be in lieu of Sections 316(a)(1)(A) and 316(a)(1)(B) of the Trust Indenture Act and such Sections 316(a)(1)(A) and 316(a)(1)(B) of the Trust Indenture Act are hereby expressly excluded from this Trust Agreement and the Securities, as permitted by the Trust Indenture Act. Subject to the foregoing provisions of this Section 2.6(b), upon such cure, waiver or other elimination, 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 Trust Agreement, but no such waiver shall extend to any subsequent or other 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 Property Trustee at the direction of the Holders of the Capital Securities constitutes a waiver of the corresponding Trust Enforcement Event with respect to the Capital Securities under this Trust Agreement. The foregoing provisions of this Section 2.6(c) shall be in lieu of Section 316(a)(1)(B) of the Trust Indenture Act and such Section 316(a)(1)(B) of the Trust Indenture Act is hereby expressly excluded from this Trust Agreement and the Securities, as permitted by the Trust Indenture Act.

SECTION 2.7. Trust Enforcement Event; Notice.

(a) The Property Trustee shall, within 90 days after the occurrence of a Trust Enforcement Event actually known to a Responsible Officer of the Property Trustee, transmit by mail, first class postage prepaid, to the Holders of the Securities, notices of all such defaults with respect to the Securities, 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); provided that, except for a default in the payment of principal of (or premium, if any) or interest on any of the Debentures, the Property Trustee shall be protected fully in withholding such notice if and so long as a Responsible Officer of the Property Trustee in good faith determines that the withholding of such notice is in the interests of the Holders of the Securities.

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

(i) a default under Sections 5.1(1) and 5.1(2) of the Indenture; or

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

ARTICLE 3
ORGANIZATION

SECTION 3.1. Name and Organization.

The Trust hereby continued is named "USB Capital VII" as such name may be modified from time to time by the Administrative Trustees following written notice to the Holders of Securities, the Property Trustee and the Delaware Trustee. 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 U.S. Bancorp, 800 Nicollet Mall, Minneapolis, Minnesota 55402. On 10 Business Days' written notice to the Holders of Securities, each of the Property Trustee, the Delaware Trustee and 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 invest the gross proceeds thereof in the Debentures, 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 to be classified as other than a grantor trust for United States federal income tax purposes.

By the acceptance of this Trust, the Trustees, the Sponsor, the Holders of the Capital Securities and Common Securities and the Capital Securities Beneficial Owners will agree to treat the Trust as a grantor trust for United States federal income tax purposes and not to take any position which is contrary to such classification.

SECTION 3.4. Authority.

Subject to the limitations provided in this Trust Agreement and to the specific duties of the Property Trustee, the Administrative Trustees shall have exclusive 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 Property 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 Trust Agreement.

(a) Except as expressly set forth in this Trust Agreement 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.

(b) Except as otherwise required by the Delaware 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(b).

(c) 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; provided that such person is a United States Person as defined in Section 7701(a)(30) of the Code.

SECTION 3.5. Title to Property of the Trust.

Except as provided in Section 3.8 with respect to the Debentures and the Property Account or as otherwise provided in this Trust Agreement, 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 ownership 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, and are hereby authorized and directed, to cause the Trust to engage in the following activities:

(a) to establish the terms and form of the Capital Securities and the Common Securities in the manner specified in Section 7.1 and issue and sell the Capital Securities and the Common Securities in accordance with this Trust Agreement; 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 issuance of the Capital Securities, at the direction of the Sponsor, to 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;

(c) to purchase the Debentures with the gross proceeds from the issuance and sale of the Capital Securities and in exchange for the Common Securities; provided, however, that the Administrative Trustees shall cause legal title to the Debentures to be held of record in the name of the Property Trustee for the benefit of the Holders of the Capital Securities and the Holders of the Common Securities;

(d) to give the Sponsor and the Property Trustee prompt written notice of the occurrence of a Special Event; provided that the Administrative Trustees shall consult with the Sponsor and the Property Trustee before taking or refraining from taking any action in relation to any such 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 Section 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 this Trust Agreement and 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 Property 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 to conduct only those services that the Administrative Trustees have authority to conduct directly, and to pay reasonable compensation for such services, provided that such person is a United States Person as defined in Section 7701(a)(30) of the Code;

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

(j) to give the certificate required by Section 314(a)(4) of the Trust Indenture Act to the Property 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 Debenture Issuer of its election to defer payments of interest on the Debentures by extending the interest payment period under the Debentures as authorized by the Indenture;

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

(o) to take any action, not inconsistent with applicable law, that the Administrative Trustees determine in their discretion to be necessary or desirable in carrying out the purposes and functions of the Trust as set out in Section 3.3 or 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 as a grantor trust for United States federal income tax purposes; and
- (iii) cooperating with the Debenture Issuer to ensure that the Debentures will be treated as indebtedness of the Debenture Issuer for United States federal income tax purposes.

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

(q) to execute and deliver 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 shall 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 have no power to, and 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 Property 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 Debenture Issuer.

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

(a) The Trust shall not, and none of the Trustees (including the Property Trustee) shall cause the Trust to, engage in any activity other than as required or authorized by this Trust Agreement. In particular, the Trust shall not and none of the Trustees (including the Property Trustee) shall cause the Trust to:

- (i) invest any proceeds received by the Trust from holding the Debentures, but shall distribute all such proceeds to Holders of Securities pursuant to the terms of this Trust Agreement 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 (other than those represented by the Debentures) 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 Trust Agreement 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) other than as provided in this Trust Agreement or by the terms of the Securities, (A) direct the time, method and place of exercising any trust or power conferred upon the Debenture Trustee with respect to the Debentures, (B) waive any past default that is waivable under the Indenture, (C) exercise any right to rescind or annul any declaration that the principal of all the Debentures shall be due and payable, or (D) consent to any amendment, modification or termination of the Indenture or the Debentures where such consent shall be required unless the Trust shall have received an opinion of counsel to the effect that such modification will not cause more than an insubstantial risk that the Trust will be deemed an Investment Company required to be registered under the Investment Company Act, or the Trust will be classified as other than a grantor trust for United States federal income tax purposes;
- (ix) take any action inconsistent with the status of the Trust as a grantor trust for United States federal income tax purposes; or
- (x) revoke any action previously authorized or approved by vote of the Holders of the Capital Securities.

SECTION 3.8. Powers and Duties of the Property Trustee.

(a) The legal title to the Debentures shall be owned by and held of record in the name of the Property Trustee for the benefit of the Trust and the Holders of the Securities. The right, title and interest of the Property Trustee to the Debentures shall vest automatically in each Person who may hereafter be appointed as Property Trustee in accordance with Section 6.6. Such vesting and cessation of title shall be effective whether or not conveyancing documents with regard to the Debentures have been executed and delivered.

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

(c) The Property Trustee shall:

(i) establish and maintain a segregated non-interest bearing trust account (the “Property Account”) in the name of and under the exclusive control of the Property Trustee on behalf of the Holders of the Securities and, upon the receipt of payments of funds made in respect of the Debentures held by the Property Trustee, deposit such funds into the Property Account and make payments to the Holders of the Capital Securities and Holders of the Common Securities from the Property Account in accordance with Section 7.2. Funds in the Property Account shall be held uninvested until disbursed in accordance with this Trust Agreement. The Property Account shall be an account that is maintained with a banking institution the rating on whose long-term unsecured indebtedness is at least equal to the rating assigned to the Capital Securities by a “nationally recognized statistical rating organization”, within the meaning of Rule 436(g)(2) under the Securities Act;

(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 Debentures 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 so directed and as shall be necessary or appropriate to effect the distribution of the Debentures to Holders of Securities upon the occurrence of a Special Event.

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

(e) The Property Trustee shall take any Legal Action which arises out of or in connection with a Trust Enforcement Event of which a Responsible Officer of the Property Trustee has actual knowledge or the Property Trustee’s duties and obligations under this Trust Agreement or the Trust Indenture Act; *provided, however*, that if a Trust Enforcement Event has occurred and is continuing and such event is attributable to the failure of the Debenture Issuer to pay interest, principal or other required payments on the Debentures 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 Debenture Issuer for enforcement of payment to such Holder of the principal of or interest on Debentures 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 Debentures. Notwithstanding anything to the contrary in this Trust Agreement or the Indenture, the Debenture 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 Debenture Issuer has heretofore made, or is currently on the date of such payment making, a payment under the Guarantee relating to such Capital Security or under Section 5.8 of the Indenture.

(f) The Property 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; or

(ii) a Successor Property Trustee has been appointed and has accepted that appointment in accordance with Section 6.6.

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

(h) The Property Trustee may authorize one or more Persons (each, a "Paying Agent") to pay Distributions, redemption payments or liquidation payments on behalf of the Trust with respect to all Securities and any such Paying Agent shall comply with Section 317(b) of the Trust Indenture Act. Any Paying Agent may be removed by the Property Trustee at any time and a successor Paying Agent or additional Paying Agents may be appointed at any time by the Property Trustee.

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

The Property Trustee shall 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 Property 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 Property Trustee.

(a) The Property 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 Trust Agreement and no implied covenants shall be read into this Trust Agreement against the Property Trustee. 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 Property Trustee has actual knowledge, the Property Trustee shall exercise such of the rights and powers vested in it by this Trust Agreement, and use the same degree of care and skill in their exercise, 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 Trust Agreement shall be construed to relieve the Property Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(i) prior to the occurrence of 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 Property Trustee shall be determined solely by the express provisions of this Trust Agreement and the Property Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Trust Agreement, and no implied covenants or obligations shall be read into this Trust Agreement against the Property Trustee; and
- b. in the absence of bad faith on the part of the Property Trustee, the Property Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Property Trustee and conforming to the requirements of this Trust Agreement; but in the case of any such certificates or opinions that by any provision hereof are specifically required to be furnished to the Property Trustee, the Property Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Trust Agreement;

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

(iii) the Property Trustee shall not be liable with respect to any action taken or omitted to be taken by it without negligence, 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 Property Trustee, or exercising any trust or power conferred upon the Property Trustee under this Trust Agreement;

(iv) no provision of this Trust Agreement shall require the Property Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if 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 Trust Agreement or indemnity reasonably satisfactory to the Property Trustee against such risk or liability is not reasonably assured to it;

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

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

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

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

SECTION 3.10. Certain Rights of Property Trustee.

(a) Subject to the provisions of Section 3.9:

(i) the Property 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 Trust Agreement shall be sufficiently evidenced by an Officers' Certificate;

(iii) whenever in the administration of this Trust Agreement, the Property Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Property 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 Property Trustee shall have no duty to see to any recording, filing or registration of any instrument (including any financing or continuation statement or any filing under tax or securities laws) or any rerecording, refiling or registration thereof;

(v) the Property Trustee may consult with counsel of its choice 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 Property Trustee shall have the right at any time to seek instructions concerning the administration of this Trust Agreement from any court of competent jurisdiction;

(vi) the Property Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Trust Agreement at the request or direction of any Holder, unless such Holder shall have provided to the Property Trustee security and indemnity, reasonably satisfactory to the Property Trustee, against the costs, expenses (including reasonable attorneys' fees and expenses and the expenses of the Property 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 Property Trustee; provided that, nothing contained in this Section 3.10(a) shall be taken to relieve the Property Trustee, upon the occurrence of a Trust Enforcement Event, of its obligation to exercise the rights and powers vested in it by this Trust Agreement;

(vii) the Property Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Property Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit;

(viii) the Property 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 Property Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder, provided that such agent, custodian, nominee or attorney is a United States Person as defined in Section 7701(a)(30) of the Code;

(ix) any authorized or required action taken by the Property Trustee or its agents hereunder shall bind the Trust and the Holders of the Securities, and the signature of the Property 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 Property Trustee to so act or as to its compliance with any of the terms and provisions of this Trust Agreement, both of which shall be conclusively evidenced by the Property Trustee's or its agent's taking such action;

(x) whenever in the administration of this Trust Agreement the Property Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder, the Property Trustee (i) may request instructions from the Holders 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 Property Trustee under the terms of the Securities in respect of such remedy, right or action, (ii) may refrain from enforcing such remedy or right or taking such other action until such instructions are received, and (iii) shall be protected in conclusively relying on or acting in or accordance with such instructions;

(xi) except as otherwise expressly provided by this Trust Agreement, the Property Trustee shall not be under any obligation to take any action that is discretionary under the provisions of this Trust Agreement;

(xii) the Property Trustee shall not be liable for any action taken, suffered or omitted to be taken by it without negligence or willful misconduct, in good faith and reasonably believed by it to be authorized or within the discretion, rights or powers conferred upon it by this Trust Agreement;

(xiii) without prejudice to any other rights available to the Property Trustee under applicable law, when the Property Trustee incurs expenses or renders services in connection with a bankruptcy, such expenses (including the fees and expenses of its counsel) and the compensation for such services are intended to constitute expenses of administration under any bankruptcy law or law relating to creditors rights generally; and

(xiv) the Property Trustee shall not be charged with knowledge of a Trust Enforcement Event unless a Responsible Officer of the Property Trustee obtains actual knowledge of such event or the Property Trustee receives written notice of such event from Holders holding more than a Majority in Liquidation Amount of the Capital Securities;

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

SECTION 3.11. Delaware Trustee.

Notwithstanding any other provision of this Trust Agreement other than Section 6.2, 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 Property Trustee described in this Trust Agreement. Except as set forth in Section 6.2, the Delaware Trustee shall be a Trustee for the sole and limited purpose of fulfilling the requirements of Section 3807(a) of the Delaware Statutory Trust Act. In the event the Delaware Trustee shall at any time be required to take any action or perform any duty hereunder with respect to the Trust, the Delaware Trustee shall be entitled to all of the same rights as the Property Trustee listed in Section 3.9(b) and Section 3.10.

SECTION 3.12. Execution of Documents.

Except as otherwise required by the Delaware Statutory Trust Act or applicable law, any Administrative Trustee is authorized to execute on behalf of the Trust any documents that the Administrative Trustees have the power and authority to execute pursuant to Section 3.6.

SECTION 3.13. Not Responsible for Recitals or Issuance of Securities.

The recitals contained in this Trust Agreement 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 Trust Agreement, the Securities, the Debentures or the Indenture.

SECTION 3.14. Duration of Trust.

The Trust shall exist until dissolved and terminated pursuant to the provisions of Article 8 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 Person, except as described in Section 3.15(b) and (c) or Section 8.2.

(b) The Trust may, at the request of the Sponsor and 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 Property Trustee, consolidate, amalgamate, merge with or into, or be replaced by or convey, transfer or lease its properties substantially as an entirety to 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 with respect to the Securities; or
- b. substitutes for the Capital 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 in priority with respect to Distributions and payments upon liquidation, redemption and otherwise;

(ii) the Debenture Issuer expressly appoints a trustee of such Successor Entity that possesses the same powers and duties as the Property Trustee as the holder of the Debentures;

(iii) the Capital Securities 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, replacement, conveyance, transfer or lease 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, replacement, conveyance, transfer or lease does not adversely affect the rights, preferences and privileges of the Holders of the Capital Securities (including any Successor Securities) in any material respect;

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

(vii) prior to such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease the Sponsor has received an opinion of independent counsel to the Trust experienced in such matters to the effect that:

- a. such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not adversely affect the rights, preferences and privileges of the Holders of the Capital Securities (including any Successor Securities) in any material respect;
- b. following such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease 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;

(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 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 aggregate liquidation amount of the Securities, consolidate, amalgamate, merge with or into, or be replaced by or convey, transfer or lease its properties and assets substantially as an entirety to, any other entity or permit any other entity to consolidate,

amalgamate, merge with or into, or replace it, if such consolidation, amalgamation, merger, replacement, conveyance, transfer or lease would cause the Trust or Successor Entity to be classified as other than a grantor trust for United States federal income tax purposes and each Holder of the Securities not to be treated as owning an undivided interest in the Debentures.

SECTION 3.16. Property Trustee May File Proofs of Claim.

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

(a) to file and prove a claim for the whole amount of any Distributions owing and unpaid in respect of the Securities (or, if the Securities are original issue discount Securities, such portion of the liquidation amount as may be specified in the terms of such Securities) and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Property Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Property Trustee, its and counsel) and of the Holders allowed in such judicial proceeding, and

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

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Property Trustee and, in the event the Property Trustee shall consent to the making of such payments directly to the Holders, to pay to the Property Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Property Trustee, its agents and counsel, and any other amounts due the Property Trustee.

Nothing herein contained shall be deemed to authorize the Property Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement adjustment or compensation affecting the Securities or the rights of any Holder thereof or to authorize the Property Trustee to vote in respect of the claim of any Holder in any such proceeding.

ARTICLE 4

SPONSOR

SECTION 4.1. Responsibilities of the Sponsor.

In connection with the issue of the Capital Securities, the Sponsor shall have the exclusive right and responsibility to engage in the following activities:

(a) to prepare for filing by the Trust with the Commission under the Securities Act or the Exchange Act, and execute on behalf of the Trust, one or more registration statements on the applicable forms, including any amendments thereto, pertaining to the Capital Securities, the Guarantee and the Debentures;

(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, and execute, an underwriting agreement and other related agreements providing for the sale of the Capital Securities.

SECTION 4.2. Indemnification and Fees and Expenses of the Trustees.

The Sponsor, in its capacity as Debenture Issuer, agrees to indemnify the Property Trustee and the Delaware Trustee for, and to hold each of them harmless against, any loss, liability or expense incurred without negligence or bad faith on the part of the Property Trustee or the Delaware Trustee, as the case may be, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses of defending either of them against any claim or liability in connection with the exercise or performance of any of their respective powers or duties hereunder; the provisions of this Section 4.2 shall survive the resignation or removal of the Delaware Trustee or the Property Trustee or the termination of this Trust Agreement.

SECTION 4.3. Compensation of the Trustees.

The Sponsor agrees to pay the Property Trustee and the Delaware Trustee from time to time such compensation for all services rendered by the Property Trustee and the Delaware Trustee hereunder as may be mutually agreed upon in writing by the Sponsor and the Property Trustee or the Delaware Trustee, as the case may be, and, except as otherwise expressly provided herein, to reimburse the Property Trustee and the Delaware Trustee upon its or their request for all reasonable expenses, disbursements and advances incurred or made by the Property Trustee or the Delaware Trustee, as the case may be, in accordance with the provisions of this Trust Agreement, except any such expense, disbursement or advance as may be attributable to its or their negligence or bad faith.

ARTICLE 5

TRUST COMMON SECURITIES HOLDER

SECTION 5.1. Debenture Issuer's Receipt of Common Securities.

On the Closing Date, the Debenture Issuer will receive all of the Common Securities issued by the Trust on the same date in exchange for Debentures issued to the Trust by the Debenture Issuer. The Common Securities will be issued in an amount equal to at least 3% of the capital of the Trust.

The aggregate stated liquidation amount of Common Securities outstanding at any time shall not be less than 3% of the capital of the Trust.

SECTION 5.2. Covenants of the Common Securities Holder.

For so long as the Capital Securities remain outstanding, the Common Securities Holder will covenant (i) to maintain directly 100% ownership of the Common Securities, (ii) to cause the Trust to remain a statutory trust and not to voluntarily dissolve, wind up, liquidate or be terminated, except as permitted by this Trust Agreement, (iii) to use its commercially reasonable efforts to ensure that the Trust will not be an investment company for purposes of the Investment Company Act, and (iv) to take no action which would be reasonably likely to cause the Trust to be classified as other than a grantor trust for United States federal income tax purposes.

ARTICLE 6

TRUSTEES

SECTION 6.1. Number of Trustees.

The number of Trustees initially shall be five, and:

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

(b) after the issuance of any Securities, the number of Trustees may be increased or decreased by vote of the Holders of a Majority in Liquidation Amount of the Common Securities voting as a class at a meeting of the Holders of the Common Securities or by written consent in lieu of such meeting; provided that the number of Trustees shall be at least three; and provided further that (1) the Delaware 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, is an entity which has its principal place of business in the State of Delaware and otherwise meets the requirements of applicable law; (2) at least one Administrative Trustee is an employee or officer of, or is affiliated with, the Sponsor; and (3) one Trustee shall be the Property Trustee for so long as this Trust Agreement 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;

(c) at all times, the Property Trustee must be (i) a bank as defined in Section 581 of the Code or (ii) a U.S. government-owned agency or U.S. government sponsored enterprise; and

(d) at all times, each Trustee must be a United States Person as defined in Section 7701(a)(30) of the Code.

SECTION 6.2. Delaware Trustee; Eligibility.

If required by the Delaware Statutory Trust Act, one Trustee (which may be the Property Trustee) (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 Property Trustee has its principal place of business in the State of Delaware and otherwise meets the requirements of applicable law, then the Property Trustee shall also be the Delaware Trustee and Section 3.11 shall have no application.

SECTION 6.3. Property Trustee; Eligibility.

(a) There shall at all times be one Trustee (which may be the Delaware Trustee) which shall act as Property Trustee which shall:

(i) not be an Affiliate of the Sponsor; and

(ii) be a corporation organized and doing business under the laws of the United States of America or any State or Territory thereof or of the District of Columbia, or a corporation or other Person permitted by the Commission to act as an institutional trustee under the Trust Indenture Act, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least 50 million U.S. dollars (\$50,000,000), and subject to supervision or examination by federal, State, Territorial or District of Columbia authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the supervising or examining authority referred to above, then for the purposes of this Section 6.3(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.

(b) If at any time the Property Trustee shall cease to be eligible to so act under Section 6.3(a), the Property Trustee shall immediately resign in the manner and with the effect set forth in Section 6.6(c).

(c) If the Property Trustee has or shall acquire any “conflicting interest” within the meaning of Section 310(b) of the Trust Indenture Act, the Property Trustee and the Holder of the Common Securities (as if it were the obligor referred to in Section 310(b) of the

Trust Indenture Act) shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act.

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

SECTION 6.4. Qualifications of Administrative Trustees and Delaware Trustee Generally.

Each Administrative Trustee and the Delaware Trustee (unless the Property 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 6.5. Initial Administrative Trustees.

The initial Administrative Trustees shall be:

David M. Moffett, Daryl N. Bible and Lee R. Mitau, the business address of all of whom is c/o U.S. Bancorp, 800 Nicollet Mall, Minneapolis, Minnesota 55402.

SECTION 6.6. Appointment, Removal and Resignation of Trustees.

(a) Subject to Section 6.6(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;
- (ii) after the issuance of any Securities (but prior to the occurrence of an Indenture Event of Default), by vote of the Holders of a Majority in Liquidation Amount of the Common Securities voting as a class at a meeting of the Holders of the Common Securities; and
- (iii) after the issuance of the Capital Securities and the occurrence of an Indenture Event of Default, and only with respect to each of the Property Trustee and Delaware Trustee, by vote of the Holders of a Majority in Liquidation Amount of the Capital Securities.

(b) The Trustee that acts as Property Trustee shall not be removed in accordance with Section 6.6(a) until a successor Trustee possessing the qualifications to act as Property Trustee under Section 6.3(a) (a "Successor Property Trustee") has been appointed and has accepted such appointment by written instrument executed by such Successor Property Trustee and delivered to the Administrative Trustees and the Sponsor. The Trustee that acts as Delaware Trustee shall not be removed in accordance with Section 6.6(a) until a successor Trustee possessing the qualifications to act as Delaware Trustee under Sections 6.2 and 6.4 (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 or its successor shall have been appointed, until his death or its dissolution or until his or its 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 Property Trustee shall be effective:

- a. until a Successor Property Trustee has been appointed and has accepted such appointment by instrument executed by such Successor Property Trustee and delivered to the Trust, the Sponsor and the resigning Property 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 Property Trustee, as the case may be, if the Property Trustee or the Delaware Trustee delivers an instrument of resignation in accordance with this Section 6.6.

(e) If no Successor Property Trustee or Successor Delaware Trustee, as the case may be, shall have been appointed and accepted appointment as provided in this Section 6.6 within 60 days after delivery to the Sponsor and the Trust of an instrument of resignation or removal, the resigning or removed Property Trustee or Delaware Trustee, as applicable, may petition any court of competent jurisdiction in the U.S. for appointment of a Successor Property Trustee or Successor Delaware Trustee, as applicable. Such court may thereupon, after prescribing such notice, if any, as it may deem proper, appoint a Successor Property Trustee or Successor Delaware Trustee, as the case may be.

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

SECTION 6.7. Vacancies among Trustees.

If a Trustee ceases to hold office for any reason and the number of Trustees is not reduced pursuant to Section 6.1, or if the number of Trustees is increased pursuant to Section 6.1, 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 6.6.

SECTION 6.8. 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 annul, dissolve or terminate 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 6.6, 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 Trust Agreement.

SECTION 6.9. 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 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 Trust Agreement, 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 6.10. Delegation of Power.

(a) Any Administrative Trustee may, by power of attorney consistent with applicable law, delegate to any natural person over the age of 21 his, her or its power for the purpose of executing any documents contemplated in Section 3.6 or making any governmental

filing; provided that such person is a United States Person as defined in Section 7701(a)(30) of the Code.

(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; provided, that such person is a United States Person as defined in Section 7701(a)(30) of the Code.

SECTION 6.11. Merger, Conversion, Consolidation or Succession to Business.

Any corporation into which the Property Trustee, the Delaware Trustee or any Administrative Trustee that is not a natural person may be merged or converted or with such Trustee may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Trustee shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of such Trustee shall be the successor of such Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

ARTICLE 7

TERMS OF SECURITIES

SECTION 7.1. General Provisions Regarding Securities.

(a) The Administrative Trustees shall on behalf of the Trust issue one class of capital securities representing undivided beneficial interests in the assets of the Trust and one class of common securities representing undivided beneficial interests in the assets of the Trust.

(i) Capital Securities. The Capital Securities of the Trust have an aggregate liquidation amount with respect to the assets of the Trust of up to three-hundred forty-five million dollars (\$345,000,000) with respect to the closing of the sale of Capital Securities on one or more occasions. The Capital Securities are hereby designated for identification purposes only as "5.875% Trust Preferred Securities" (the "Capital Securities"). The Capital Security Certificates evidencing the Capital Securities shall be substantially in the form of Exhibit A to this Trust Agreement, 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 or quoted.

(ii) Common Securities. The Common Securities of the Trust have an aggregate liquidation amount with respect to the assets of the Trust of up to ten million six-hundred seventy thousand one-hundred twenty-five dollars

(\$10,670,125) with respect to the closing of the sale of Common Securities on one or more occasions. The Common Securities are hereby designated for identification purposes only as "5.875% Common Securities" (the "Common Securities" and, together with the Capital Securities, the "Securities"). The Common Security Certificates evidencing the Common Securities shall be substantially in the form of Exhibit B to this Trust Agreement, with such changes and additions thereto or deletions therefrom as may be required by ordinary usage, custom or practice.

(b) Payment of Distributions on, and payment of the Redemption Price upon a redemption of, the Capital Securities and the Common Securities, as applicable, shall be made Pro Rata based on the liquidation amount of such Capital Securities and Common Securities; provided, however, that if on any date on which amounts payable on distribution or redemption, an Indenture Event of Default shall have occurred and be continuing, no payment of any Distribution on, or Redemption Price of, any of the Common Securities, and no other payment on account of the redemption, liquidation or other acquisition of such Common Securities, shall be made unless payment in full in cash of all accumulated and unpaid Distributions on all of the outstanding Capital Securities for all Distribution periods terminating on or prior thereto, or, in the case of amounts payable on redemption, the full amount of the Redemption Price for all of the outstanding Capital Securities then called for redemption, shall have been made or provided for, and all funds available to the Property Trustee shall first be applied to the payment in full in cash of all Distributions on, or the Redemption Price of, the Capital Securities then due and payable. The Trust shall issue no securities or other interests in the assets of the Trust other than the Capital Securities and the Common Securities.

(c) 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 an Administrative Trustee of the Trust who shall have signed any of the Certificates 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 Certificate, shall be the Administrative Trustees of the Trust, although at the date of the execution and delivery of the Trust Agreement 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.

A Certificate representing Capital Securities shall not be valid until authenticated by the manual signature of an authorized officer of the Property Trustee. Such signature shall be conclusive evidence that such Certificate has been authenticated under this Trust Agreement.

Upon a written order of the Trust signed by one Administrative Trustee, the Property Trustee shall authenticate the Certificates representing Capital Securities for original issue. The aggregate amount of Capital Securities outstanding at any time shall not exceed the liquidation amount set forth in Section 7.1(a)(i).

The Property Trustee may appoint an authenticating agent acceptable to the Trust to authenticate Certificates. An authenticating agent may authenticate Certificates whenever the Property Trustee may do so. Each reference in this Trust Agreement to authentication by the Property Trustee includes authentication by such agent. An authenticating agent has the same rights as the Property Trustee to deal with the Sponsor or an Affiliate of the Sponsor.

(d) 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.

(e) Upon issuance of the Securities as provided in this Trust Agreement, the Securities so issued shall be deemed to be validly issued, fully paid and non-assessable undivided beneficial interests in the assets of the Trust.

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

(g) The holders of the Securities shall have no preemptive or similar rights.

SECTION 7.2. Distributions.

(a) As owners of undivided beneficial ownership interests in the Debentures, holders of Securities shall be entitled to receive cumulative cash Distributions at the rate per annum of 5.875% of the stated liquidation amount of \$25.00 per Security. Pursuant to the Indenture, the amount of interest on the Debentures payable for any period shorter than a full quarterly interest period, and, as a result, Distributions on the Securities payable for any period shorter than a full quarterly distribution period shall be computed on the basis of a 30-day month and for periods of less than a month, the actual number of days elapsed per 30-day month. Subject to Section 7.1(b), Distributions shall be made on the Capital Securities and the Common Securities on a Pro Rata basis. Pursuant to the Indenture, interest on the Debentures shall, from the date of original issue, accrue and be cumulative, and, as a result Distributions on the Securities shall, from the date of original issue, accumulate and be cumulative. Distributions shall be payable quarterly in arrears on each August 15, November 15, February 15 and May 15 of each year, commencing November 15, 2005, when, as and if available for payment, by the Property Trustee, except as otherwise described below. Distributions are payable only to the extent that payments are made in respect of the Debentures held by the Property Trustee and to the extent that the Trust has funds available for the payment of such Distributions in the Property Account.

(b) Pursuant to the Indenture, interest not paid on the scheduled payment date will accrue and compound quarterly at the rate of 5.875% per annum, and, as a result, interests

on the Debentures not paid on the scheduled payment date will accrue and compound quarterly at the rate of 5.875% per annum (and, as a result) the Distributions on the Securities will accumulate and compound at the rate of 5.875% per annum (“Compounded Distributions”). “Distributions” shall mean ordinary cumulative distributions together with any Compounded Distributions.

(c) If and to the extent that the Debenture Issuer makes a payment of interest, premium and/or principal on the Debentures held by the Property Trustee (the amount of any such payment being a “Payment Amount”), the Property Trustee shall and is directed, to the extent funds are available for that purpose, make a Pro Rata distribution of the Payment Amount to Holders, subject to Section 7.1(b).

(d) Distributions on the Securities shall be payable to the Holders thereof as they appear on the register of the Trust as of the close of business on the relevant record dates. While the Capital Securities are represented by one or more Global Securities, the relevant record dates shall be the close of business the Business Day preceding such Distribution payment date; otherwise the relevant record date shall be the fifteenth day (whether or not a Business Day) preceding such Distribution payment date. At all times, the Distribution payment dates shall correspond to the interest payment dates on the Debentures. Distributions payable on any Securities that are not punctually paid on any Distribution payment date, as a result of the Debenture Issuer having failed to make a payment under the Debentures, shall 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 this Trust Agreement. 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), with the same force and effect as if made on such payment 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 among the Holders of the Securities except as provided in Section 7.1(b).

SECTION 7.3. Redemption of Securities.

(a) Upon the repayment or redemption, in whole or in part, of the Debentures held by the Trust, whether at the stated maturity of the Debentures or upon earlier redemption as provided in the Indenture, the proceeds from such repayment or redemption shall be simultaneously applied Pro Rata (subject to Section 7.1(b)) to redeem Securities having an aggregate liquidation amount equal to the aggregate principal amount of the Debentures so repaid or redeemed at the Redemption Price. Holders shall be given not less than 30 nor more than 60 days notice of such redemption in accordance with Section 7.4.

(b) On the date fixed for any distribution of Debentures, upon dissolution of the Trust, (i) the Securities will no longer be deemed to be outstanding and (ii) certificates representing Securities will be deemed to represent the Debentures having an aggregate principal

amount equal to the stated liquidation amount of, and bearing accrued and unpaid interest equal to accumulated and unpaid distributions on, such Securities until such certificates are presented to the Sponsor or its agent for transfer or reissuance.

SECTION 7.4. Redemption Procedures.

(a) Notice of any redemption of, or notice of distribution of Debentures in exchange for, the Securities (a "Redemption/Distribution Notice"), which notice shall be irrevocable, will be given by the Trust by mail to each Holder of Securities to be redeemed or exchanged not fewer than 30 nor more than 60 days before the date fixed for redemption or exchange thereof which, in the case of a redemption, will be the date fixed for redemption of the Debentures. For purposes of the calculation of the date of redemption or exchange and the dates on which notices are given pursuant to this Section 7.4(a), 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 Holders of Securities. Each Redemption/Distribution Notice shall be addressed to the Holders of Securities at the address of each such Holder appearing in the register 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.

(b) If fewer than all the outstanding Securities are to be so redeemed, the Common Securities and the Capital Securities will be redeemed Pro Rata (subject to Section 7.1(b)) and the Capital Securities to be redeemed will be redeemed as described in Section 7.4(c) below. The particular Capital Securities to be redeemed will be selected on a Pro Rata basis by the Property Trustee from the outstanding Capital Securities not previously called for redemption, by such method (including, without limitation, by lot) as the Property Trustee shall deem fair and appropriate. The Trust may not redeem the Securities in part unless all accumulated and unpaid Distributions to the date of redemption have been paid in full on all Securities then outstanding. For all purposes of this Trust Agreement, unless the context otherwise requires, all provisions relating to the redemption of Capital Securities shall relate, in the case of any Capital Security redeemed or to be redeemed only in part, to the portion of the aggregate liquidation amount of Capital Securities which has been or is to be redeemed.

(c) Subject to the Trust's fulfillment of the notice requirements set forth in Section 7.4(a) above, if Securities are to be redeemed, then (i) with respect to Capital Securities represented by one or more Global Securities, by 12:00 noon, New York City time, on the redemption date, provided that the Debenture Issuer has paid the Property Trustee a sufficient amount of cash in connection with the related redemption or maturity of the Debentures, the Property Trustee will deposit irrevocably with the Depository 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 the Depository irrevocable instructions and authority to pay the Redemption Price to the Holders of the Capital Securities and (ii) with respect to Securities not represented by one or more Global Securities, provided that the Debenture Issuer has paid the Property Trustee a sufficient amount of cash in connection with the related redemption or maturity of the Debentures, the Property Trustee will give the Paying Agent irrevocable instructions and authority to pay the relevant Redemption Price to the Holders of such Securities upon surrender of their certificates evidencing the Capital Securities. Payment

of the Redemption Price on the Capital Securities will be made to the recordholders thereof as they appear on the register of the Trust on the relevant record date, which shall be one Business Day prior to the relevant redemption date; *provided, however*, that with respect to the Capital Securities not represented by one or more Global Securities, the relevant record date shall be the date fifteen days prior to the relevant redemption date. 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) with the same force and effect as if made on such date fixed for redemption. If, however, the Business Day falls in the next calendar year, then payment of the Redemption Price will be made on the immediately preceding Business Day with the same force and effect as if made on such date fixed for redemption. If payment of the Redemption Price in respect of any Securities is not paid because the payment of the Redemption Price on the Debentures is not made, interest will continue to accrue on the Debentures, and, as a result, Distributions on such Securities will continue to accumulate at the then applicable rate from the original redemption date to the actual date of payment, in which case the actual payment date will be considered the date fixed for redemption for purposes of calculating the Redemption Price. For these purposes, the applicable Redemption Price shall not include Distributions which are being paid to Holders who were Holders on a relevant record date. If a Redemption/Distribution Notice shall have been given and funds deposited or paid as required, then immediately prior to the close of business on the date of such deposit or payment, Distributions will cease to accumulate on the Securities called for redemption and all rights of Holders of such Securities so called for redemption will cease, except the right of the Holders to receive the Redemption Price, but without interest on such Redemption Price, and from and after the date fixed for redemption, such Securities will cease to be outstanding.

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 called for redemption, except in the case of any Securities being redeemed in part, any portion thereof not to be redeemed.

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

SECTION 7.5. Voting Rights of Capital Securities.

(a) Except as provided under Section 6.6, Section 11.1 and this Article 7 and as otherwise required by the Delaware Statutory Trust Act, the Trust Indenture Act and other applicable law, the Holders of the Capital Securities shall have no voting rights.

(b) Subject to the requirement of the Property Trustee obtaining a tax opinion in certain circumstances set forth in Section 7.5(d) below, the Holders of a Majority in Liquidation Amount of the Capital Securities voting separately as a class have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Property Trustee, or to direct the exercise of any trust or power conferred upon the Property Trustee under the Trust Agreement, including the right to direct the Property Trustee, as Holder of the Debentures, to (i) exercise the remedies available to it under the Indenture as a Holder of

the Debentures; (ii) consent to any amendment or modification of the Indenture or the Debentures where such consent shall be required or (iii) waive any past default and its consequences that is waivable under Section 5.13 of the Indenture; provided, however, that if an Indenture Event of Default has occurred and is continuing, then the Holders of 25% of the aggregate liquidation amount of the Capital Securities may direct the Property Trustee to declare the principal of and interest on the Debentures due and payable; provided, further, that where a consent or action under the Indenture would require the consent or act of the Holders of more than a majority of the aggregate principal amount of Debentures affected thereby, only the Holders of the percentage of the aggregate stated liquidation amount of the Capital Securities which is at least equal to the percentage required under the Indenture may direct the Property Trustee to give such consent to take such action.

(c) If the Property Trustee fails to enforce its rights under the Debentures after a Holder of Capital Securities has made a written request, such Holder of Capital Securities may, to the extent permitted by applicable law, institute a legal proceeding directly against the Debenture Issuer to enforce the Property Trustee's rights under the Indenture without first instituting any legal proceeding against the Property Trustee or any other Person. In addition, if a Trust Enforcement Event has occurred and is continuing and such event is attributable to the failure of the Debenture Issuer to make any interest, principal or other required payments when due under the Indenture, then a Holder of Capital Securities may directly institute a Direct Action against the Debenture Issuer on or after the respective due date specified in the Debentures.

(d) The Property Trustee shall notify all Holders of the Capital Securities of any notice of any Indenture Event of Default received from the Debenture Issuer with respect to the Debentures. Such notice shall state that such Indenture Event of Default also constitutes a Trust Enforcement Event. Except with respect to directing the time, method, and place of conducting a proceeding for a remedy, the Property Trustee shall be under no obligation to take any of the actions described in clause 7.5(b)(i) and (ii) above unless the Property Trustee has obtained an opinion of independent tax counsel to the effect that the Trust will not be classified as an association or publicly traded partnership taxable as a corporation for United States federal income tax purposes as a result of such action.

(e) In the event the consent of the Property Trustee, as the Holder of the Debentures, is required under the Indenture with respect to any amendment or modification of the Indenture, the Property Trustee shall request the direction of the Holders of the Capital Securities with respect to such amendment or modification and shall vote with respect to such amendment or modification as directed by not less than a majority in liquidation amount of the Capital Securities voting together as a single class; provided, however, that where a consent under the Indenture would require the consent of the Holders of more than a majority of the aggregate principal amount of the Debentures, the Property Trustee may only give such consent at the direction of the Holders of at least the same proportion in aggregate stated liquidation amount of the Securities. The Property Trustee shall not take any such action in accordance with the directions of the Holders of the Securities unless the Property Trustee has obtained an opinion of independent tax counsel to the effect that the Trust will not be classified as an association or publicly traded partnership taxable as a corporation for United States federal income tax purposes as a result of such action.

(f) A waiver of an Indenture Event of Default with respect to the Debentures will constitute a waiver of the corresponding Trust Enforcement Event.

(g) 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 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 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.

(h) No vote or consent of the Holders of Capital Securities shall be required for the Trust to redeem and cancel Capital Securities or distribute Debentures in accordance with this Trust Agreement and the terms of the Securities.

(i) Notwithstanding that Holders of Capital Securities are entitled to vote or consent under any of the circumstances described above, any of the Securities that are owned at such time by the Debenture Issuer, any Administrative Trustee or any entity directly or indirectly controlled by, or under direct or indirect common control with, the Debenture Issuer or any Administrative Trustee, shall not be entitled to vote or consent and shall, for purposes of such vote or consent, be treated as if such Securities were not outstanding; *provided, however*, that Persons otherwise eligible to vote to whom the Debenture Issuer or any of its subsidiaries have pledged Capital Securities may vote or consent with respect to such pledged Capital Securities under any of the circumstances described herein.

(j) Subject to Sections 6.6(a) and 7.5(k), Holders of the Capital Securities shall have no rights to appoint or remove the Trustees, who may be appointed, removed or replaced solely by the Common Securities Holder.

(k) If an Indenture Event of Default has occurred and is continuing, the Property Trustee and the Delaware Trustee may be removed at such time only by a Majority in Liquidation Amount of the Capital Securities.

(l) The Trustees shall not revoke any action previously authorized or approved by a vote of the Holders of the Securities, except by a subsequent vote of the Holders of the Securities.

SECTION 7.6. Voting Rights of Common Securities.

(a) Except as provided under Section 6.1(b), this Section 7.6 or Section 11.1 or as otherwise required by the Delaware Statutory Trust Act, the Trust Indenture Act or other applicable law or provided by the Trust Agreement, the Holders of the Common Securities will have no voting rights.

(b) Subject to Sections 6.6(a) and 7.5(k), the Holders of the Common Securities shall be entitled, in accordance with Article VI of this Trust Agreement, to vote to appoint, remove or replace any Trustee or to increase or decrease the number of Trustees.

(c) Subject to Section 2.6 and only after all Trust Enforcement Events with respect to the Capital Securities have been cured, waived, or otherwise eliminated and subject to the requirement of the Property Trustee obtaining a tax opinion in certain circumstances set forth in this paragraph (c), the Holders of a Majority in Liquidation Amount of the Common Securities have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Property Trustee, or direct the exercise of any trust or power conferred upon the Property Trustee under this Trust Agreement, including the right to direct the Property Trustee, as Holder of the Debentures, to (i) exercise the remedies available to it under the Indenture as a Holder of the Debentures, (ii) consent to any amendment or modification of the Indenture or the Debentures where such consent shall be required or (iii) waive any past default and its consequences that is waivable under Section 5.13 of the Indenture; provided, however, that where a consent or action under the Indenture would require the consent or act of the Holders of more than a majority of the aggregate principal amount of Debentures affected thereby, only the Holders of the percentage of the aggregate stated liquidation amount of the Common Securities which is at least equal to the percentage required under the Indenture may direct the Property Trustee to have such consent or take such action. Except with respect to directing the time, method, and place of conducting a proceeding for a remedy, the Property Trustee shall be under no obligation to take any of the actions described in clause 7.6(c)(i) and (ii) above unless the Property Trustee has obtained an opinion of independent tax counsel to the effect that, as a result of such action, for United States federal income tax purposes the Trust will not be classified as other than a grantor trust.

(d) If the Property Trustee fails to enforce its rights under the Debentures after a Holder of Common Securities has made a written request, such Holder of Common Securities may, to the extent permitted by applicable law, directly institute a legal proceeding directly against the Debenture Issuer to enforce the Property Trustee's rights under the Debentures without first instituting any legal proceeding against the Property Trustee or any other Person.

(e) A waiver of an Indenture Event of Default with respect to the Debentures will constitute a waiver of the corresponding Trust Enforcement Event.

(f) Any required approval or direction of Holders of Common Securities may be given at a separate meeting of Holders of Common Securities convened for such purpose, at a meeting of all of the Holders of Securities or pursuant to written consent. The Administrative Trustees will cause a notice of any meeting at which Holders of Common Securities are entitled to vote to be mailed to each Holder of record of Common Securities. Each such notice will include a statement setting forth (i) the date 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.

(g) 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 Debentures in accordance with the Trust Agreement and the terms of the Securities.

SECTION 7.7. Paying Agent.

In the event that any Capital Securities are not in book-entry only form, the Trust shall maintain in the Borough of Manhattan, City of New York, State of New York, an office or agency where the Capital Securities may be presented for payment ("Paying Agent"). The Trust may appoint the paying agent and may appoint one or more additional paying agents in such other locations as it shall determine. The term "Paying Agent" includes any additional paying agent. The Trust may change any Paying Agent without prior notice to the Holders. The Trust shall notify the Property Trustee of the name and address of any Paying Agent not a party to this Trust Agreement. If the Trust fails to appoint or maintain another entity as Paying Agent, the Property Trustee shall act as such. The Trust or any of its Affiliates may act as Paying Agent. The Property Trustee shall initially act as Paying Agent for the Securities. In the event the Property Trustee shall no longer be the Paying Agent, the Administrative Trustees shall appoint a successor (which shall be a bank or trust company acceptable to the Debenture Issuer) to act as Paying Agent. The Paying Agent shall be permitted to resign as Paying Agent upon 30 days' written notice to the Property Trustee and the Debenture Issuer.

SECTION 7.8. Listing.

The Sponsor shall use its best efforts to cause the Capital Securities to be listed for quotation on the New York Stock Exchange.

SECTION 7.9. 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 Trust Agreement and in the terms of the Securities. To the fullest extent permitted by law, any transfer or purported transfer of any Security not made in accordance with this Trust Agreement shall be null and void.

(b) (i) Subject to this Article 7, Capital Securities shall be freely transferable.

(ii) The Holder of the Common Securities may not transfer the Common Securities except (A) in compliance with a consolidation, merger, sale, conveyance or lease of the Sponsor in compliance with Article VIII of the Indenture or (B) to the Sponsor or an Affiliate thereof in compliance with applicable law, including the Securities Act and applicable state securities and blue sky laws. To the fullest extent permitted by law, any attempted transfer of the Common Securities other than as set forth in the immediately preceding sentence shall be null and void.

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

(d) Upon surrender for registration of transfer of any Security at an office or agency of the Trust designated for such purpose, the Trust shall execute, and the Property Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of any authorized denominations and of a like aggregate principal amount.

(e) At the option of the Holder, Securities may be exchanged for other Securities of any authorized denominations and of a like aggregate principal amount, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Trust shall execute, and in the case of Capital Securities the Property Trustee shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

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

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

(h) If the Securities are to be redeemed in part, the Trust shall not be required (A) to issue, register the transfer of or exchange any Securities during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of any such Securities selected for redemption under Section 7.4 and ending at the close of business on the day of such mailing, or (B) to register the transfer or exchange of any Security so selected for redemption in whole or in part, except the unredeemed portion of any Security being redeemed in part.

SECTION 7.10. 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 the Trustees, the Sponsor and the Trust harmless,

then, in the absence of notice that such Certificate shall have been acquired by a bona fide 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 7.10, 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.

SECTION 7.11. Deemed Security Holders.

The Trustees may treat the Person in whose name any Certificate shall be registered on the register 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 7.12. Global Securities.

On initial issuance, the Capital Securities shall be issued in definitive form to the Sponsor. Upon transfer by the Sponsor of the Capital Securities, the Capital Securities may be issued in the form of one or more Global Securities. If the Capital Securities are to be issued in the form of one or more Global Securities, then an Administrative Trustee on behalf of the Trust shall execute and the Property Trustee shall authenticate and deliver one or more Global Securities that (i) shall represent and shall be denominated in an amount equal to the aggregate liquidation amount of all of the Capital Securities to be issued in the form of Global Securities and not yet cancelled, (ii) shall be registered in the name of the Depository for such Global Security or the nominee of such Depository, and (iii) shall be delivered by the Property Trustee to such Depository or pursuant to such Depository's instructions. Global Securities shall bear a legend substantially to the following effect:

“This Capital Security is a Global Security within the meaning of the Trust Agreement hereinafter referred to and is registered in the name of The Depository Trust Company, a New York corporation (the “Depository”), or a nominee of the Depository. This Capital Security is exchangeable for Capital Securities registered in the name of a person other than the Depository or its nominee only in the limited circumstances described in the Trust Agreement and no transfer of this Capital Security (other than a transfer of this Capital Security as a whole by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository) may be registered except in limited circumstances.

Unless this Capital Security Certificate is presented by an authorized representative of the Depository to USB Capital VII or its agent for registration of transfer, exchange or payment, and any Capital Security Certificate issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of the Depository (and any payment hereon is made to Cede & Co. or to such other entity as is requested by an authorized representative of the Depository), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF

FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.”

Capital Securities not represented by a Global Security issued in exchange for all or a part of a Global Security pursuant to this Section 7.12 shall be registered in such names and in such authorized denominations as the Depositary, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Property Trustee. Upon execution and authentication, the Property Trustee shall deliver such Capital Securities not represented by a Global Security to the Persons in whose names such definitive Capital Securities are so registered.

At such time as all interests in Global Securities have been redeemed, repurchased or cancelled, such Global Securities shall be, upon receipt thereof, cancelled by the Property Trustee in accordance with standing procedures of the Depositary. At any time prior to such cancellation, if any interest in Global Securities is exchanged for Capital Securities not represented by a Global Security, redeemed, cancelled or transferred to a transferee who receives Capital Securities not represented by a Global Security therefor or any Capital Security not represented by a Global Security is exchanged or transferred for part of Global Securities, the principal amount of such Global Securities shall, in accordance with the standing procedures of the Depositary, be reduced or increased, as the case may be, and an endorsement shall be made on such Global Securities by the Property Trustee to reflect such reduction or increase.

The Trust and the Property Trustee may for all purposes, including the making of payments due on the Capital Securities, deal with the Depositary as the authorized representative of the Holders for the purposes of exercising the rights of Holders hereunder. The rights of the owner of any beneficial interest in a Global Security shall be limited to those established by law and agreements between such owners and depository participants provided, that no such agreement shall give any rights to any Person against the Trust or the Property Trustee without the written consent of the parties so affected. Multiple requests and directions from and votes of the Depositary as holder of Capital Securities in global form with respect to any particular matter shall not be deemed inconsistent to the extent they do not represent an amount of Capital Securities in excess of those held in the name of the Depositary or its nominee.

If at any time the Depositary for any Capital Securities represented by one or more Global Securities notifies the Trust that it is unwilling or unable to continue as Depositary for such Capital Securities or if at any time the Depositary for such Capital Securities shall no longer be eligible under this Section 7.12, the Trust shall appoint a successor Depositary with respect to such Capital Securities. If a successor Depositary for such Capital Securities is not appointed by the Trust within 90 days after the Trust receives such notice or becomes aware of such ineligibility, the Trust’s election that such Capital Securities be represented by one or more Global Securities shall no longer be effective and the Trust shall execute, and the Property Trustee will authenticate and deliver, Capital Securities in definitive registered form, in any authorized denominations, in an aggregate liquidation amount equal to the principal amount of the Global Security or Capital Securities representing such Capital Securities in exchange for such Global Security or Capital Securities.

The Trust may at any time and in its sole discretion determine that the Capital Securities issued in the form of one or more Global Securities shall no longer be represented by a Global Security or Capital Securities. In such event the Trust shall execute, and the Property Trustee, shall authenticate and deliver, Capital Securities in definitive registered form, in any authorized denominations, in an aggregate liquidation amount equal to the principal amount of the Global Security or Capital Securities representing such Capital Securities, in exchange for such Global Security or Capital Securities.

Notwithstanding any other provisions of this Trust Agreement (other than the provisions set forth in Section 7.9), Global Securities may not be transferred as a whole except 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 or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary.

Interests of beneficial owners in a Global Security may be transferred or exchanged for Capital Securities not represented by a Global Security and Capital Securities not represented by a Global Security may be transferred or exchange for Global Securities in accordance with rules of the Depositary and the provisions of Section 7.9.

ARTICLE 8

DISSOLUTION AND TERMINATION OF TRUST

SECTION 8.1. Dissolution and Termination of Trust.

(a) The Trust shall dissolve upon the earliest of:

- (i) the bankruptcy of the Holder of the Common Securities or the Sponsor;
- (ii) the filing of a certificate of dissolution or its equivalent with respect to the Sponsor or the revocation of the Sponsor's charter and the expiration of 90 days after the revocation without a reinstatement thereof;
- (iii) the entry of a decree of judicial dissolution of the Sponsor or the Trust;
- (iv) the time when all of the Securities shall have been called for redemption and the amounts then due shall have been paid to the Holders in accordance with the terms of the Securities;
- (v) at the Sponsor's election by notice and direction to the Property Trustee to distribute the Debentures to the Holders of the Securities in exchange for all of the Securities, subject to the receipt of any necessary approvals by the Federal Reserve that may then be required under the applicable capital guidelines or policies of the Federal Reserve; *provided* that the Sponsor will be required to obtain an opinion of an independent counsel that the distribution of the

Debentures will not be taxable to the Holders of the Capital Securities for United States federal income tax purposes; or

(vi) the time when all of the Administrative Trustees and the Sponsor shall have consented to dissolution of the Trust provided such action is taken before the issuance of any Securities.

(b) As soon as is practicable after the occurrence of an event referred to in Section 8.1(a) and upon completion of the winding up and liquidation of the Trust, the Trustees shall terminate the Trust by filing a certificate of cancellation with the Secretary of State of the State of Delaware.

(c) The provisions of Section 4.2 and Article 9 shall survive the termination of the Trust.

SECTION 8.2. Liquidation Distribution Upon Dissolution of the Trust.

(a) In the event of any voluntary or involuntary liquidation, dissolution, or winding-up of the Trust (each a "Liquidation"), the Holders of the Securities on the date of the Liquidation will be entitled to receive, out of the assets of the Trust available for distribution to Holders of Securities after satisfaction of the Trust's liabilities to creditors, if any, distributions in cash or other immediately available funds in an amount equal to the aggregate of the stated liquidation amount of \$25.00 per Security plus accumulated and unpaid Distributions thereon to the date of payment (such amount being the "Liquidation Distribution"), unless, in connection with such Liquidation, Debentures in an aggregate stated principal amount equal to the aggregate stated liquidation amount of, with an interest rate identical to the distribution rate of, and accumulated and unpaid interest equal to accrued and unpaid Distributions on, such Securities shall be distributed on a Pro Rata basis to the Holders of the Securities in exchange for such Securities.

(b) If, upon any such Liquidation, 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. The Holders of the Common Securities will be entitled to receive distributions upon any such Liquidation Pro Rata with the Holders of the Capital Securities except that if an Indenture Event of Default has occurred and is continuing, the Capital Securities shall have a preference over the Common Securities with regard to such distributions as provided for in Section 7.1(b).

ARTICLE 9
LIMITATION OF LIABILITY OF HOLDERS OF SECURITIES, DELAWARE
TRUSTEES OR OTHERS

SECTION 9.1. Liability.

(a) Except as expressly set forth in this Trust Agreement, the Guarantee and the terms of the Securities, the Sponsor:

(i) shall not be 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) shall not be required to pay to the Trust or to any Holder of Securities any deficit upon dissolution of the Trust or otherwise.

(b) Pursuant to Section 3803(a) of the Delaware Statutory Trust Act, the Holder of the Common 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; provided, however, the Holders 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 Section 3803(a) of the Delaware 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 9.2. 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 Trust Agreement 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 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 9.3. 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 Trust Agreement shall not be liable to the Trust or to another Covered Person for its good faith reliance on the provisions of this Trust Agreement. The provisions of this Trust Agreement, to the extent that they restrict the duties and liabilities of an Indemnified Person otherwise existing at law or in equity (other than the duties imposed on the Property 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 Person and any Indemnified Person; or

(ii) whenever this Trust Agreement 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 Trust Agreement 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 Trust Agreement 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 Trust Agreement or by applicable law.

SECTION 9.4. Indemnification.

(a) The Debenture Issuer shall indemnify, to the full extent permitted by law, any Debenture Issuer 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 Debenture Issuer Indemnified Person against expenses (including attorney 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 Debenture Issuer 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.

(b) The Debenture Issuer shall indemnify, to the full extent permitted by law, any Debenture Issuer 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 Debenture Issuer 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 Debenture Issuer 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.

(c) Any indemnification under paragraphs (a) and (b) of this Section 9.4 (unless ordered by a court) shall be made by the Debenture Issuer only as authorized in the specific case upon a determination that indemnification of the Debenture Issuer Indemnified Person is proper in the circumstances because he has met the applicable standard of conduct set forth in paragraphs (a) and (b). 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.

(d) Expenses (including attorneys' fees) incurred by a Debenture Issuer Indemnified Person in defending a civil, criminal, administrative or investigative action, suit or proceeding referred to in paragraphs (a) and (b) of this Section 9.4 shall be paid by the Debenture Issuer in advance of the final disposition of such action, suit or proceeding upon receipt of an

undertaking by or on behalf of such Debenture Issuer Indemnified Person to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Debenture Issuer as authorized in this Section 9.4. Notwithstanding the foregoing, no advance shall be made by the Debenture Issuer if a determination is reasonably and promptly made (1) by the Administrative Trustees by a majority vote of a quorum of disinterested Administrative Trustees, (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) 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 Debenture Issuer 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 Debenture Issuer 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.

(e) The indemnification and advancement of expenses provided by, or granted pursuant to, the other paragraphs of this Section 9.4 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 Debenture 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 9.4 shall be deemed to be provided by a contract between the Debenture Issuer and each Debenture Issuer Indemnified Person who serves in such capacity at any time while this Section 9.4 is in effect. Any repeal or modification of this Section 9.4 shall not affect any rights or obligations then existing.

(f) The Debenture Issuer or the Trust may purchase and maintain insurance on behalf of any person who is or was a Debenture Issuer 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 Debenture Issuer would have the power to indemnify him against such liability under the provisions of this Section 9.4.

(g) For purposes of this Section 9.4, 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 9.4 with respect to the resulting or surviving entity as he would have with respect to such constituent entity if its separate existence had continued.

(h) The indemnification and advancement of expenses provided by, or granted pursuant to, this Section 9.4 shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a Debenture Issuer Indemnified Person and shall inure to the benefit of the heirs, executors and administrators of such a person. The obligation to

indemnify as set forth in this Section 9.4 shall survive the resignation or removal of the Delaware Trustee or the Property Trustee or the termination of this Trust Agreement.

SECTION 9.5. Outside Businesses.

Subject to the provisions of Section 6.3, any Covered Person, the Sponsor, the Delaware Trustee and the Property 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 activities of the Trust, and the Trust and the Holders of Securities shall have no rights by virtue of this Trust Agreement in and to such independent ventures or the income or profits derived therefrom, and the pursuit of any such venture, even if competitive with the activities of the Trust, shall not be deemed wrongful or improper. No Covered Person, the Sponsor, the Delaware Trustee or the Property 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 Property 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 Property 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 depository 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 10
ACCOUNTING**

SECTION 10.1. 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 10.2. 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, 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, an 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 10.3. 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 Debentures held by the Property Trustee shall be made directly to the Property Account and no other funds of the Trust shall be deposited in the Property Account. The sole signatories for such accounts shall be designated by the Administrative Trustees; provided, however, that the Property Trustee shall designate the signatories for the Property Account.

SECTION 10.4. 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 over withholding, 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 11
AMENDMENTS AND MEETINGS

SECTION 11.1. Amendments.

(a) Except as otherwise provided in this Trust Agreement or by any applicable terms of the Securities, this Trust Agreement may only be amended by a written instrument approved and executed by the Sponsor and (i) the Administrative Trustees (or, if there are more than two Administrative Trustees, a majority of the Administrative Trustees) and (ii) the Property Trustee if the amendment affects the rights, powers, duties, obligations or immunities of the Property Trustee; and (iii) the Delaware Trustee if the amendment affects the rights, powers, duties, obligations or immunities of 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 Property Trustee 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 Trust Agreement (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 Property Trustee, the Property 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 Trust Agreement (including the terms of the Securities) and that all conditions precedent to the execution and delivery of such amendment have been satisfied; 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 Trust Agreement (including the terms of the Securities) and that all conditions precedent to the execution and delivery of such amendment have been satisfied; and

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

- a. cause the Trust to be classified as other than a grantor trust for United States federal income tax purposes;
- b. reduce or otherwise adversely affect the powers of the Property 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) If the Trust has issued any Securities that remain outstanding:

(i) any amendment that would (a) change the amount or timing of any distribution of the Securities or otherwise adversely affect the amount of any distribution required to be made in respect of the Securities as of a specified date or (b) restrict the right of a Holder of Securities to institute suit for the enforcement of any such payment on or after such date, will entitle the Holders of such Securities, voting together as a single class, to vote on such amendment or proposal and such amendment or proposal shall not be effective except with the approval of each of the Holders of the Securities affected thereby; and

(ii) Except as provided in Section 11.1(c)(i) hereof, any provision of this Trust Agreement may be amended by the Trustee and the Sponsor with (i) the consent of the Holders representing not less than a Majority in Liquidation Amount of the Securities outstanding and (ii) receipt by the Trustees of an opinion of counsel to the effect that such amendment or the exercise of any power granted to the Trustees in accordance with such amendment will not affect the Trust's status as a grantor trust for United States federal income tax purposes or the Trust's exemption from status of an Investment Company.

(d) This Section 11.1 shall not be amended without the consent of all of the Holders of the Securities.

(e) Article 4 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 5 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.

(g) Notwithstanding Section 11.1(c), this Trust Agreement may be amended without the consent of the Holders of the Securities, if such amendment does not adversely affect in any material respect the rights of the holders of the Securities, to:

(i) cure any ambiguity;

(ii) correct or supplement any provision in this Trust Agreement that may be defective or inconsistent with any other provision of this Trust Agreement;

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

(iv) to conform to any change in Rule 3a-5 of the Investment Company Act or written change in interpretation or application of Rule 3a-5 of the Investment Company Act by any legislative body, court, government agency or regulatory authority; or

(v) to modify, eliminate and add to any provision of this Trust Agreement to ensure that the Trust will be classified as a grantor trust for United States federal income tax purposes at all times that any Securities are outstanding or to ensure that the Trust will not be required to register as an Investment Company under the Investment Company Act.

SECTION 11.2. 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 Trust Agreement, the terms of the Securities or the rules of any stock exchange on which the Capital Securities are listed or admitted for trading. The Administrative Trustees shall call a meeting of the Holders of such class if directed to do so by the Holders of 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 calls 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 Trust Agreement 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 Holders 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 such proxy. 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 Delaware Statutory Trust Act, this Trust Agreement, 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 for 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 12

REPRESENTATIONS OF PROPERTY TRUSTEE AND DELAWARE TRUSTEE

SECTION 12.1. Representations and Warranties of the Property Trustee.

The Trustee that acts as initial Property Trustee represents and warrants to the Trust and to the Sponsor at the date of this Trust Agreement, and each Successor Property Trustee represents and warrants to the Trust and the Sponsor at the time of the Successor Property Trustee's acceptance of its appointment as Property Trustee that:

- (a) the Property Trustee is a company duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, with trust power and authority to execute and deliver, and to carry out and perform its obligations under the terms of, this Trust Agreement;
- (b) the Property Trustee satisfies the requirements set forth in Section 6.3(a);
- (c) the execution, delivery and performance by the Property Trustee of this Trust Agreement have been duly authorized by all necessary corporate action on the part

of the Property Trustee. This Trust Agreement has been duly executed and delivered by the Property Trustee, and it constitutes a legal, valid and binding obligation of the Property Trustee, enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, moratorium, insolvency and other similar laws affecting creditors' rights generally and to general principles of equity and the discretion of the court (regardless of whether the enforcement of such remedies is considered in a proceeding in equity or at law);

(d) the execution, delivery and performance of this Trust Agreement by the Property Trustee do not conflict with or constitute a breach of the articles of association or incorporation, as the case may be, or the by-laws (or other similar organizational documents) of the Property Trustee; and

(e) no consent, approval or authorization of, or registration with or notice to, any Delaware or federal banking authority is required for the execution, delivery or performance by the Property Trustee of this Trust Agreement.

SECTION 12.2. Representations and Warranties of the 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 Trust Agreement, 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 satisfies the requirements set forth in Section 6.2, satisfies Trust Section 3807(a) of the Delaware Statutory Trust Act and has the power and authority to execute and deliver, and to carry out and perform its obligations under the terms of, this Trust Agreement and, if it is not a natural person, is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization;

(b) the Delaware Trustee has been authorized to perform its obligations under the Certificate of Trust and this Trust Agreement. This Trust Agreement 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); and

(c) no consent, approval or authorization of, or registration with or notice to, any Delaware or federal banking authority is required for the execution, delivery or performance by the Delaware Trustee of this Trust Agreement.

ARTICLE 13
MISCELLANEOUS

SECTION 13.1. Notices.

All notices provided for in this Trust Agreement 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 Property Trustee, the Delaware Trustee and the Holders of the Securities):

c/o U.S. Bancorp
800 Nicollet Mall
Minneapolis, Minnesota 55402
Attention: Treasury Department
Facsimile No: (612) 303-1338

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

Delaware Trust Company, National Association
c/o 300 Delaware Avenue, 9th Floor
Wilmington, Delaware 19801
Attention: Steven Finklea, Corporate Trust Group
Facsimile No.: (302) 552-3129

(c) if given to the Property Trustee, at its Corporate Trust Office (or such other address as the Property Trustee may give notice of to the Administrative Trustees, the Delaware Trustee and the Holders of the Securities).

(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 Property Trustee, the Delaware Trustee and the Trust):

c/o U.S. Bancorp
800 Nicollet Mall
Minneapolis, Minnesota 55402
Attention: Treasury Department
Facsimile No.: (612) 303-1338

(e) if given to any other Holder, at the address set forth on the register 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 13.2. Governing Law.

This Trust Agreement 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.

SECTION 13.3. 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 Trust Agreement shall be interpreted in a manner consistent with such classification.

SECTION 13.4. Headings.

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

SECTION 13.5. Successors and Assigns.

Whenever in this Trust Agreement 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 Trust Agreement by the Sponsor and the Trustees shall bind and inure to the benefit of their respective successors and assigns, whether so expressed.

SECTION 13.6. Partial Enforceability.

If any provision of this Trust Agreement, or the application of such provision to any Person or circumstance, shall be held invalid, the remainder of this Trust Agreement, 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 13.7. Counterparts.

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

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

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

U.S. BANCORP,
as Sponsor, as Common Securities Holder and as
Debenture Issuer

By: /s/ Kenneth D. Nelson

Name: Kenneth D. Nelson
Title: Senior Vice President

DELAWARE TRUST COMPANY, NATIONAL
ASSOCIATION,
as Property Trustee

By: /s/ Jason Concavage

Name: Jason Concavage
Title: Trust Officer

DELAWARE TRUST COMPANY, NATIONAL
ASSOCIATION,
as Delaware Trustee

By: /s/ Jason Concavage

Name: Jason Concavage
Title: Trust Officer

/s/ David M. Moffett

DAVID M. MOFFETT,
as Administrative Trustee

/s/ Daryl N. Bible

DARYL N. BIBLE,
as Administrative Trustee

/s/ Lee R. Mitau

LEE R. MITAU,
as Administrative Trustee

[IF THE CAPITAL SECURITY IS TO BE A GLOBAL CAPITAL SECURITY, INSERT THE FOLLOWING: This Capital Security is a Global Security within the meaning of the Trust Agreement hereinafter referred to and is registered in the name of The Depository Trust Company, a New York corporation (the "Depository"), or a nominee of the Depository. This Capital Security is exchangeable for Capital Securities registered in the name of a person other than the Depository or its nominee only in the limited circumstances described in the Trust Agreement and no transfer of this Capital Security (other than a transfer of this Security as a whole by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository) may be registered except in limited circumstances.

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

Certificate No. _____ Number of Capital Securities: _____

CUSIP No. _____

**Certificate Evidencing 5.875% Trust Preferred Securities
of
USB Capital VII**

**5.875% Trust Preferred Securities
Fully and Unconditionally
Guaranteed by U.S. Bancorp**

USB CAPITAL VII, a statutory trust created 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 ownership interests in the assets of the Trust designated the "5.875% Trust Preferred Securities" (the "Capital Securities"). The Capital Securities are transferable on the register of the Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer as provided in the Trust Agreement (as defined below). The designation, rights, privileges, restrictions, preferences and other terms and provisions of the Capital Securities represented hereby are issued and shall in all respects be subject to the provisions of the Second Amended and Restated Trust Agreement of the Trust, dated as of August 15, 2005, as the same may be amended from time to time (the "Trust Agreement"), by and among U.S. BANCORP, DAVID

M. MOFFETT, DARYL N. BIBLE and LEE R. MITAU, as Administrative Trustees, DELAWARE TRUST COMPANY, NATIONAL ASSOCIATION, as Property Trustee, and DELAWARE TRUST COMPANY, NATIONAL ASSOCIATION, as Delaware Trustee, and the holders of undivided beneficial ownership interests in the assets of the Trust. Capitalized terms used herein but not defined shall have the meaning given them in the Trust Agreement. The Holder is entitled to the benefits of the Guarantee to the extent described therein. The Sponsor will provide a copy of the Trust Agreement, the Guarantee 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 Trust Agreement and is entitled to the benefits thereunder.

By acceptance, the Holder agrees to treat, for United States federal, state and local income tax purposes, the Debentures as indebtedness and the Capital Securities as evidence of undivided beneficial ownership interests in the Debentures.

IN WITNESS WHEREOF, the Trust has executed this certificate this ____ day of [], 2005.

USB CAPITAL VII

By: _____
Name:
Title: Administrative Trustee

This is one of the Capital Securities referred to in the within-mentioned Trust Agreement.

DELAWARE TRUST COMPANY, NATIONAL
ASSOCIATION,
as Property Trustee

By: _____
Authorized Officer

**TRANSFER OF THIS CERTIFICATE IS SUBJECT TO THE CONDITIONS SET
FORTH IN THE TRUST AGREEMENT
REFERRED TO BELOW.**

Certificate No. _____

Number of Common Securities: _____

**Certificate Evidencing Common Securities
of
USB Capital VII
5.875% Common Securities**

USB CAPITAL VII, a statutory trust created under the laws of the State of Delaware (the "Trust"), hereby certifies that U.S. BANCORP (the "Holder") is the registered owner of common securities of the Trust representing an undivided beneficial ownership interest in the assets of the Trust designated the "5.875% Common Securities" (the "Common Securities"). The Common Securities are not transferable and any attempted transfer thereof shall be void except as permitted by applicable law and by Section 7.9(b)(ii) of the Trust Agreement (as defined below). 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 Second Amended and Restated Trust Agreement of the Trust, dated as of August 15, 2005 (as the same may be amended from time to time, the "Trust Agreement"), by and among U.S. Bancorp, as Sponsor, DAVID M. MOFFETT, DARYL N. BIBLE AND LEE R. MITAU, as Administrative Trustees, DELAWARE TRUST COMPANY, NATIONAL ASSOCIATION, as Property Trustee, and DELAWARE TRUST COMPANY, NATIONAL ASSOCIATION, as Delaware Trustee, and the holders of undivided beneficial ownership interests in the assets of the Trust. The Holder is entitled to the benefits of the Guarantee to the extent described therein. Capitalized terms used herein but not defined shall have the meaning given them in the Trust Agreement. The Sponsor will provide a copy of the Trust Agreement, the Guarantee and the Indenture to the 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 Trust Agreement and is entitled to the benefits thereunder.

By acceptance, the Holder agrees to treat, for United States federal, state and local income tax purposes, the Debentures as indebtedness and the Common Securities as evidence of an undivided indirect beneficial ownership interest in the Debentures.

IN WITNESS WHEREOF, the Trust has executed this certificate this ___day of ___, 2005.

USB CAPITAL VII

By: _____

Name:

Title: Administrative Trustee

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GUARANTEE AGREEMENT

Dated as of August 15, 2005

By and Between

**U.S. BANCORP,
as Guarantor**

and

**DELAWARE TRUST COMPANY, NATIONAL ASSOCIATION,
as Trustee**

CROSS REFERENCE TABLE¹

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.*

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GUARANTEE AGREEMENT

This GUARANTEE AGREEMENT (the "Guarantee"), dated as of August 15, 2005, is executed and delivered by U.S. BANCORP, a Delaware corporation (the "Guarantor"), and DELAWARE TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, 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 USB CAPITAL VII, a Delaware statutory trust (the "Trust").

RECITALS

WHEREAS, pursuant to the Trust Agreement (as defined herein), the Trust may issue up to \$345,000,000 aggregate liquidation amount of capital securities, having a liquidation amount of \$25.00 per security and designated the "5.875% Trust Preferred Securities" of the Trust (the "Capital Securities") and up to \$10,670,125 aggregate liquidation amount of common securities, having a liquidation amount of \$25.00 per security and designated the "5.875% Common Securities" of the Trust (the "Common Securities" and, together with the Capital Securities, the "Securities");

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

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

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

ARTICLE 1

INTERPRETATION AND DEFINITIONS

SECTION 1.1. Interpretation and Definitions. In this Guarantee, unless the context otherwise requires:

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

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

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

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

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

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

(g) the following terms have the following meanings:

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

“*Business Day*” has the meaning specified in the Trust Agreement.

“*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 300 Delaware Avenue, 9th Floor, Wilmington, Delaware 19801.

“*Debentures*” means the series of junior subordinated debentures to be issued by U.S. Bancorp designated the “5.875% Junior Subordinated Debentures due 2035”, held by the Property Trustee as defined in the Trust Agreement.

“*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 accumulated and unpaid Distributions (as defined in the Trust Agreement) 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, including all accumulated 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 Debentures to the Holders in exchange for Securities as provided in the Trust Agreement), the lesser of (a) the aggregate of the liquidation amount and all accumulated 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 Delaware Trust Company, National Association, 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 April 28, 2005, by and between U.S. Bancorp and Delaware Trust Company, National Association, as Trustee, as supplemented by the First Supplemental Indenture dated as of August 3, 2005, and any indenture supplemental thereto pursuant to which the Debentures are to be issued to the Property Trustee, as defined in the Trust Agreement.

"*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 accumulated and unpaid Distributions to the date upon which the voting percentages are determined) of all outstanding Securities of the relevant class. In determining whether the Holders of the requisite amount of Securities have voted, Securities which are owned by the Guarantor or any Affiliate of the Guarantor or any other obligor on the Securities shall be disregarded for the purpose of any such determination.

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

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

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

"Redemption Price" has the meaning specified in the Trust Agreement.

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

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

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

"Trust Agreement" means the Amended and Restated Trust Agreement, 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.

"Trust Enforcement Event" in respect of the Securities means an Indenture Event of Default (as defined in the Indenture) has occurred and is continuing in respect of the Debentures.

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

ARTICLE 2

TRUST INDENTURE ACT

SECTION 2.1. Trust Indenture Act; Application. (a) This Guarantee is subject to the provisions of the Trust Indenture Act that are required to be part of this Guarantee and shall, to the extent applicable, be governed by such provisions.

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

SECTION 2.2. Lists of Holders of Securities. (a) The Guarantor shall provide the Guarantee Trustee (i) except while the Capital Securities are represented by one or more Global Securities, at least two Business Days prior to the date for payment of Distributions, a list, in such form as the Guarantee Trustee may reasonably require, of the names and addresses of the Holders of the Securities ("List of Holders") as of the record date relating to the payment of such Distributions, and (ii) at any other time, within 30 days of receipt by the Guarantor of a written request from the Guarantee Trustee for a List of Holders as of a date no more than 15 days before such List of Holders is given to the Guarantee Trustee; provided that the Guarantor shall not be obligated to provide such List of Holders at any time the List of Holders does not differ from the most recent List of Holders given to the Guarantee Trustee by the Guarantor. The Guarantee Trustee shall preserve, in as current a form as is reasonably practicable, all information contained in Lists of Holders given to it, provided that the Guarantee Trustee may destroy any List of Holders previously given to it on receipt of a new List of Holders.

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

SECTION 2.3. Reports by Guarantee Trustee. Within 60 days after May 15 of each year (commencing with the year of the first anniversary of the issuance of the Securities), the Guarantee Trustee shall provide to the Holders of the Securities such reports as are required by Section 313 of the Trust Indenture Act (if any) in the form and in the manner provided by Section 313 of the Trust Indenture Act. The Guarantee Trustee shall also comply with the requirements of Section 313(d) of the Trust Indenture Act.

SECTION 2.4. Periodic Reports to Guarantee Trustee. The Guarantor shall provide to the Guarantee Trustee such documents, reports and information as required by Section 314(a) (if any) of the Trust Indenture Act and the compliance certificate required by Section 314(a) of the Trust Indenture Act in the form, in the manner and at the times required by Section 314(a) of the Trust Indenture Act, but in no event later than 120 days after the end of each calendar year.

SECTION 2.5. Evidence of Compliance with Conditions Precedent. The Guarantor shall provide to the Guarantee Trustee such evidence of compliance with any conditions precedent, if any, provided for in this Guarantee that relate to any of the matters set forth in

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

SECTION 2.6. Guarantee Event of Default; Waiver. The Holders of a Majority in Liquidation Amount of the 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 Trust Agreement 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 3
POWERS, DUTIES AND RIGHTS OF
GUARANTEE TRUSTEE

SECTION 3.1. Powers and Duties of Guarantee Trustee.

(a) This Guarantee shall be held by the Guarantee Trustee on behalf of the Trust for the benefit of the Holders of the Securities, and the Guarantee Trustee shall not transfer this Guarantee to any Person except a Holder of Securities exercising his or her rights pursuant to Section 5.4(b) or to a Successor Guarantee Trustee on acceptance by such Successor Guarantee Trustee of its appointment to act as Successor Guarantee Trustee. The right, title and interest of the Guarantee Trustee in and to this Guarantee shall automatically vest in any Successor Guarantee Trustee, and such vesting and succession of title shall be effective whether or not conveyance documents have been executed and delivered pursuant to the appointment of such Successor Guarantee Trustee.

(b) If a Guarantee Event of Default actually known to a Responsible Officer of the Guarantee Trustee has occurred and is continuing, the Guarantee Trustee shall enforce this Guarantee for the benefit of the Holders of the Securities.

(c) The Guarantee Trustee, before the occurrence of any Guarantee Event of Default and after the curing of all Guarantee Events of Default that may have occurred, shall undertake to perform only such duties as are specifically set forth in this Guarantee, and no implied covenants shall be read into this Guarantee against the Guarantee Trustee. In case a Guarantee Event of Default has occurred (that has not been cured or waived pursuant to Section 2.6) and is actually known to a Responsible Officer of the Guarantee Trustee, the Guarantee Trustee shall exercise such of the rights and powers vested in it by this Guarantee, and use the same degree of care and skill in its exercise thereof, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

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

(i) prior to the occurrence of any Guarantee Event of Default and after the curing or waiving of all such Guarantee Events of Default that may have occurred:

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

(B) in the absence of bad faith on the part of the Guarantee Trustee, the Guarantee Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Guarantee Trustee and conforming to the requirements of this Guarantee; but in the case of any such certificates or opinions that by any provision hereof are specifically required to be furnished to the Guarantee Trustee, the Guarantee Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Guarantee;

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

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

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

SECTION 3.2. Certain Rights of Guarantee Trustee. (a) Subject to the provisions of Section 3.1:

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

(ii) Any direction or act of the Guarantor contemplated by this Guarantee shall be sufficiently evidenced by an Officers' Certificate;

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

(iv) The Guarantee Trustee shall have no duty to see to any recording, filing or registration or any instrument (or any rerecording, refiling 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 further inquiry or investigation into such facts or matters as it may see fit;

(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 4

GUARANTEE TRUSTEE

SECTION 4.1. Guarantee Trustee; Eligibility.

(a) There shall be at all times a Guarantee Trustee which shall:

(i) not be an Affiliate of the Guarantor; and

(ii) be a corporation organized and doing business under the laws of the United States of America or any state or territory thereof or of the District of Columbia, or a corporation or other Person permitted by the Securities and Exchange Commission to act as an institutional trustee under the Trust Indenture Act, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least 50 million U.S. dollars (\$50,000,000), and subject to supervision or examination by federal, state, territorial or District of Columbia authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the supervising or examining authority referred to above, then, for the purposes of this Section 4.1(a)(ii), the combined capital and surplus of such corporation shall be deemed to be its

combined capital and surplus as set forth in its most recent report of condition so published.

(b) If at any time the Guarantee Trustee shall cease to be eligible to so act under Section 4.1(a), the Guarantee Trustee shall immediately resign in the manner and with the effect set out in Section 4.2(c).

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

SECTION 4.2. Appointment, Removal and Resignation of Guarantee Trustee.

(a) Subject to Section 4.2(b), unless a Guarantee Event of Default shall have occurred and be continuing, the Guarantee Trustee may be appointed or removed with or without cause at any time by the Guarantor.

(b) The Guarantee Trustee shall not be removed in accordance with Section 4.2(a) until a Successor Guarantee Trustee has been appointed and has accepted such appointment by written instrument executed by such Successor Guarantee Trustee and delivered to the Guarantor.

(c) The Guarantee Trustee appointed to office shall hold such office until a Successor Guarantee Trustee shall have been appointed or until its removal or resignation. The Guarantee Trustee may resign from office (without need for prior or subsequent accounting) by an instrument in writing executed by the Guarantee Trustee and delivered to the Guarantor, which resignation shall not take effect until a Successor Guarantee Trustee has been appointed and has accepted such appointment by instrument in writing executed by such Successor Guarantee Trustee and delivered to the Guarantor and the resigning Guarantee Trustee.

(d) If no Successor Guarantee Trustee shall have been appointed and accepted appointment as provided in this Section 4.2 within 60 days after delivery to the Guarantor of an instrument of removal or resignation, the removed or resigning Guarantee Trustee may petition 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 which have accrued to the date of such termination, removal or resignation.

ARTICLE 5
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 extend the interest payment period on the Debentures pursuant to Section 3.11 thereof and the Guarantor shall not be obligated hereunder to make any Guarantee Payments during any Extension Period (as defined in the certificate evidencing the Debentures) with respect to the Distributions (as defined in the Trust Agreement) 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 Debentures);

(c) Any failure, omission, delay or lack of diligence on the part of the Property Trustee or the Holders to enforce, assert or exercise any right, privilege, power or remedy conferred on the Property 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 Debentures on or after the respective due dates specified in the Debentures, 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 6

LIMITATION OF TRANSACTIONS; SUBORDINATION

SECTION 6.1. Limitation of Transactions.

So long as any Securities remain outstanding, if (i) there shall have occurred an event of default under the Indenture with respect to the Debentures, (ii) there shall be a Guarantee Event of Default or (iii) the Guarantor shall have given notice of its election of an Extension Period as provided in the certificate evidencing the Debentures and shall not have rescinded such notice, or such Extension Period or any extension thereof shall be continuing, then the Guarantor shall not, and shall not permit any subsidiary of the Guarantor, to (x) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any of the Guarantor's capital stock or (y) make any payment of principal, interest or premium, if any, on or repay, repurchase or redeem any debt securities of the Guarantor that rank *pari passu* with or junior in interest to the Debentures or make any guarantee payments with respect to any guarantee by the Guarantor of the debt securities of any subsidiary of the Guarantor if such guarantee ranks *pari passu* with or junior in interest to the Debentures (other than (a) dividends or distributions in Common Stock of the Guarantor, (b) any declaration of a dividend in connection with the implementation of a rights plan or the issuance

of stock under any such plan or the redemption or repurchase of any such rights pursuant thereto, (c) payments under this Guarantee and (d) purchases of Common Stock related to the issuance of Common Stock or rights under any of the Company's benefits plans for its directors, officers or employees).

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 and Subordinated Debt (as defined in the Indenture) of the Guarantor in the same manner and to the same extent as set forth in Article XIII of the Indenture.

SECTION 6.3. Subordination of Common Securities.

If a Trust Enforcement Event has occurred and is continuing under the Trust Agreement, 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 7
TERMINATION

SECTION 7.1. Termination.

This Guarantee shall terminate upon (i) full payment of the Redemption Price of all Securities, (ii) distribution of the Debentures to the Holders of all the Securities or (iii) full payment of the amounts payable in accordance with the Trust Agreement 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 8
INDEMNIFICATION

SECTION 8.1. Indemnification.

The Guarantor agrees to indemnify each Debenture Issuer Indemnified Person, the Property Trustee and the Delaware Trustee (as each such term is defined in the Trust Agreement) for, and to hold each such Person harmless against any loss, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trust or 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 9

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 at least a Majority in Liquidation Amount of the Securities. The provisions of Section 11.2 of the Trust Agreement 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):

Delaware Trust Company, National Association
300 Delaware Avenue
Wilmington, Delaware 19801
Facsimile No.: (302) 552-3129
Attention: Steven Finklea, Corporate Trust Group

(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):

U.S. Bancorp
800 Nicollet Mall
Minneapolis, Minnesota 55402
Facsimile No.: (612) 303-1338
Attention: Treasury Department

(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.

IN WITNESS WHEREOF, this Guarantee is executed as of the day and year first above written.

U.S. BANCORP,
as Guarantor

By: /s/ Kenneth D. Nelson
Name: Kenneth D. Nelson
Title: Senior Vice President

DELAWARE TRUST COMPANY, NATIONAL
ASSOCIATION
as Guarantee Trustee

By: /s/ Jason Concavage
Name: Jason Concavage
Title: Trust Officer