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As filed with the Securities and Exchange Commission on June 30, 2017.

Registration No. 333-

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

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

MIDLAND STATES BANCORP, INC.

(Exact name of registrant as specified in its charter)

Illinois
(State or other jurisdiction of
incorporation or organization)

37-1233196
(I.R.S. Employer
Identification No.)

**1201 Network Centre Drive
Effingham, Illinois 62401
(217) 342-7321**

(Address, including zip code, and telephone number, including area code, of each registrant's principal executive offices)

**Jeffrey G. Ludwig
Executive Vice President
Midland States Bancorp, Inc.
1201 Network Centre Drive
Effingham, Illinois 62401
(217) 342-7321**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copy to:

**Dennis R. Wendte, Esq.
Bill Fay, Esq.
Barack Ferrazzano Kirschbaum & Nagelberg LLP
200 West Madison Street, Suite 3900
Chicago, Illinois 60606
(312) 984-3100**

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

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

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

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

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

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

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

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

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered(1)	Proposed maximum offering price per unit(1)	Proposed maximum aggregate offering price(1)	Amount of registration fee(1)
Primary Offering:				
Common Stock, \$0.01 par value per share(2)				
Non-Voting Common Stock, \$0.01 par value per share(2)				
Preferred Stock, \$2.00 par value per share(2)				
Debt Securities(3)				
Warrants(4)				
Units(5)				
Total Primary Offering(6)			\$165,000,000	\$19,123.50
Secondary Offering				
Common Stock, \$0.01 par value per share(2)	954,277 shares	33.29(7)	\$31,767,881.33	\$3,681.90
TOTAL			\$196,767,881.33	\$22,805.40

- (1) Calculated in accordance with Rule 457(o) under the Securities Act of 1933. The proposed maximum offering price per security will be determined from time to time by the registrant in connection with the issuance of the securities registered by this registration statement. The amount registered is not specified as to each class of securities to be registered hereunder pursuant to General Instruction II.D. to Form S-3 under the Securities Act of 1933.
- (2) Shares of common stock or preferred stock may be issued in primary offerings, upon conversion of debt securities or preferred stock registered hereby or upon the exercise of warrants to purchase preferred stock or common stock.
- (3) The debt securities to be offered hereunder will consist of one or more series of senior debt securities or subordinated debt securities, or any thereof, as more fully described herein.
- (4) Warrants exercisable for common stock, preferred stock, debt securities or other securities.
- (5) Each unit will be issued under a unit agreement and will represent an interest in a combination of one or more of the securities registered hereunder.
- (6) The proposed maximum offering price per unit with respect to the primary offering will be determined by us in connection with the issuance of the securities. With respect to the primary offering, in no event will the aggregate offering price of all securities issued by the registrant from time to time pursuant to this registration statement exceed \$165,000,000.00.
- (7) Estimated solely for the purpose of calculating the registration fee required by Section 6(b) of the Securities Act and computed pursuant to 457(c) under the Securities Act based on the average of the high and low prices of the registrant's common stock on the Nasdaq Global Select Market on June 23, 2017.

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

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

SUBJECT TO COMPLETION, DATED JUNE 30, 2017

PROSPECTUS

\$165,000,000



**Common Stock
Preferred Stock
Debt Securities
Warrants
Units**

and

954,277 shares of Common Stock Offered by the Selling Shareholder

Midland States Bancorp, Inc. ("we," "us," "our" or the "Company") may offer from time to time, in one or more offerings, and in any combination, the securities described in this prospectus with an aggregate initial offering price of \$165,000,000. This prospectus describes the general terms of these securities and the general manner in which we will offer them. Each time that we offer and sell securities using this prospectus, we will provide a supplement to this prospectus that contains specific information about the securities and their terms and the manner in which we will offer them for sale. The prospectus supplement also may add or update information contained in this prospectus. You should carefully read this prospectus and any supplement to this prospectus, as well as any documents we have incorporated into this prospectus by reference, before you invest in any of these securities. References herein to "prospectus supplement" are deemed to refer to any pricing supplement or free writing prospectus describing the specific pricing or other terms of the applicable offering that we prepare and distribute.

In addition, the selling shareholder identified herein may from time to time offer and sell up to 954,277 shares of our common stock. We will not receive any of the proceeds from the sale of our common stock by the selling shareholder.

We or the selling shareholder may offer and sell these securities through underwriters, dealers or agents, or directly to purchasers on a continuous or delayed basis. We will provide the names of any such underwriters, dealers or agents used in connection with the sale of any of these securities, as well as any fees, commissions or discounts we or the selling shareholder may pay to such underwriters, dealers or agents in connection with the sale of these securities, in the applicable prospectus supplement.

Our common stock is listed on the NASDAQ Global Select Market under the symbol "MSBI". On June 29, 2017, the last reported sale price of our common stock was \$33.67. We have not yet determined whether any of the other securities that may be offered pursuant to this prospectus will be listed on any exchange. If we decide to do so, a prospectus supplement relating to such securities will identify the exchange or market on which they will be listed.

These securities are not bank deposits and are not insured by the Federal Deposit Insurance Corporation or any other governmental agency, nor are they obligations of, or guaranteed by, a bank. This prospectus is not an offer to sell these securities, and it is not soliciting an offer to buy these securities, in any state or jurisdiction where the offer or sale is not permitted.

Investing in our securities involves risks. You should refer to the section entitled "*Risk Factors*" on page 1 of this prospectus, as well as the risk factors included in the applicable prospectus supplement and certain of our periodic reports and other information that we file with the Securities and Exchange Commission, and carefully consider that information before buying our securities.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

This prospectus is dated _____, 2017.

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ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission, which we refer to as the SEC, using a "shelf" registration process. Under this shelf registration process, we may sell from time to time, in one or more offerings, on a continuous or delayed basis, any combination of the securities described in this prospectus with an aggregate initial offering price of \$165,000,000. In addition, under this shelf registration process, the selling shareholder named in this prospectus may sell from time to time up to 954,277 shares our common stock.

This prospectus provides you with a general description of the securities we or the selling shareholder may offer. Each time we or the selling shareholder sell securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. Such prospectus supplement may also add, update or change information contained or incorporated by reference in this prospectus. If there is any inconsistency between the information in this prospectus and the applicable prospectus supplement, you should rely on the information in the prospectus supplement. You should read this prospectus (including the documents incorporated by reference) and the applicable prospectus supplement together with the additional information referred to under the heading "Where You Can Find More Information."

You should rely only on the information contained or incorporated by reference in this prospectus or in any supplement to this prospectus. Neither we nor the selling shareholder have authorized anyone to provide you with different information. Neither we nor the selling shareholder are making an offer to sell or soliciting an offer to buy these securities in any jurisdiction in which the offer or solicitation is not authorized or in which the person making the offer or solicitation is not qualified to do so or to anyone to whom it is unlawful to make the offer or solicitation. You should assume that the information contained or incorporated by reference in this prospectus or any prospectus supplement is accurate as of its date only.

Any of the securities described in this prospectus and in a prospectus supplement may be convertible or exchangeable into, or exercisable for, other securities that are described in this prospectus or will be described in a prospectus supplement, and may be issued separately, together or as part of a unit consisting of two or more securities, which may or may not be separate from one another. The securities offered hereby may include new or hybrid securities developed in the future that combine features of any of the securities described in this prospectus.

The registration statement that contains this prospectus, including the exhibits to the registration statement, also contains additional information about us and the securities offered under this prospectus. You can find the registration statement at the SEC's website or at the SEC office mentioned under the heading "Where You Can Find More Information."

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus, any related prospectus supplement and the documents we incorporate by reference in this prospectus contain forward-looking statements within the meaning of and are intended to be covered by the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. These forward-looking statements reflect our current views with respect to, among other things, future events and our financial performance. These statements are often, but not always, made through the use of words or phrases such as "may," "might," "should," "could," "predict," "potential," "believe," "expect," "continue," "will," "anticipate," "seek," "estimate," "intend," "plan," "projection," "goal," "target," "outlook," "aim," and "would" or the negative version of those words or other comparable words or phrases of a future or forward-looking nature. These forward-looking statements are not historical facts, and are based on current expectations, estimates and projections about our industry, management's beliefs and certain assumptions made by management, many of which, by their nature, are inherently uncertain and beyond our control. Accordingly, we caution you that any such forward-

looking statements are not guarantees of future performance and are subject to risks, assumptions, estimates and uncertainties that are difficult to predict. Although we believe that the expectations reflected in these forward-looking statements are reasonable as of the date made, actual results may prove to be materially different from the results expressed or implied by the forward-looking statements.

A number of important factors could cause our actual results to differ materially from those indicated in these forward-looking statements, including the following:

- business and economic conditions, particularly those affecting the financial services industry and our primary market areas;
- our ability to successfully manage our credit risk and the sufficiency of our allowance for loan loss;
- factors that can impact the performance of our loan portfolio, including real estate values and liquidity in our primary market areas, the financial health of our commercial borrowers and the success of construction projects that we finance, including any loans acquired in acquisition transactions;
- compliance with governmental and regulatory requirements, including the Dodd-Frank Wall Street Reform and Consumer Protection Act (which we refer to as the "Dodd-Frank Act") and others relating to banking, consumer protection, securities and tax matters, and our ability to maintain licenses required in connection with commercial mortgage origination, sale and servicing operations;
- our ability to identify and address cyber-security risks, fraud and systems errors;
- risks related to our acquisition strategy, including our ability to identify suitable acquisition candidates, exposure to potential asset and credit quality risks and unknown or contingent liabilities, the time and costs of integrating systems, procedures and personnel, the need for capital to finance such transactions, our ability to obtain required regulatory approvals, possible failures in realizing the anticipated benefits from acquisitions, the risk that integration of recent acquisitions will be materially delayed or will be more costly or difficult than expected;
- our ability to effectively execute our strategic plan and manage our growth;
- accounting treatment for loans acquired in connection with our acquisitions;
- changes in our senior management team and our ability to attract, motivate and retain qualified personnel;
- governmental monetary and fiscal policies, and changes in market interest rates;
- liquidity issues, including fluctuations in the fair value and liquidity of the securities we hold for sale and our ability to raise additional capital, if necessary;
- effects of competition from a wide variety of local, regional, national and other providers of financial, investment and insurance services;
- the impact of any claims or legal actions to which we may be subject, including any effect on our reputation;
- changes in federal tax law or policy; and
- each of the factors and risks identified in the "Risk Factors" section included under Item 1A. of Part I of our most recent Annual Report on Form 10-K and in the "Risk Factors" sections of this prospectus and the applicable prospectus supplement.

The foregoing factors should not be construed as exhaustive and should be read together with the other cautionary statements included in this prospectus. Because of these risks and other uncertainties, our actual future results, performance or achievement, or industry results, may be materially different from the results indicated by the forward looking statements in this prospectus. In addition, our past results of operations are not necessarily indicative of our future results. You should not rely on any forward looking statements, which represent our beliefs, assumptions and estimates only as of the dates on which they were made, as predictions of future events. Any forward-looking statement speaks only as of the date on which it is made, and we do not undertake any obligation to update or review any forward-looking statement, whether as a result of new information, future developments or otherwise.

MIDLAND STATES BANCORP, INC.

The Company, an Illinois corporation formed in 1988, is a diversified financial holding company headquartered in Effingham, Illinois. We completed our initial public offering on May 24, 2016. Our principal banking subsidiary, Midland States Bank (which we refer to as the "Bank"), an Illinois state-chartered bank formed in 1881, has branches across Illinois and in Missouri and Colorado, and provides a broad array of traditional community banking and other complementary financial services, including commercial lending, residential mortgage origination, wealth management, merchant services and prime consumer lending. We also originate and service government sponsored mortgages for multifamily and healthcare facilities through our subsidiary, Love Funding Corporation, based in Washington, D.C., and operate a commercial equipment leasing business on a nationwide basis through our subsidiary, Heartland Business Credit Corporation, based in Denver, Colorado.

In 2007, we adopted a strategic plan focused on building a performance-based, customer-centric culture, seeking accretive acquisitions, driving organic growth, creating revenue diversification and building a robust enterprise-wide risk management program. Since that time we have grown organically and through a series of twelve acquisitions, with an over-arching focus on enhancing shareholder value and building a platform for scalability. Most recently, on June 9, 2017, we completed the acquisition of Centruze Financial Corporation (which we refer to as "Centruze") and its banking subsidiary, Centruze Bank, which we intend to merge into the Bank. Through the Centruze acquisition, we greatly expanded our presence in northern and central Illinois.

Our principal executive offices are located at 1201 Network Centre Drive, Effingham, Illinois 62401, and our telephone number at that address is (217) 342-7321.

Additional information about us is included in our filings with the SEC, which are incorporated by reference into this prospectus. See "Where You Can Find More Information" and "Incorporation of Certain Information by Reference" in this prospectus.

RISK FACTORS

An investment in our securities involves certain risks. Before making an investment decision, you should carefully read and consider the risk factors incorporated by reference in this prospectus, as the same may be updated from time to time by our future filings with the SEC, as well as those contained in any applicable prospectus supplement. Our business, financial condition or results of operations could be materially adversely affected by any of these risks. The trading price of our securities could decline due to any of these risks, and you may lose all or part of your investment. This prospectus and documents incorporated by reference in this prospectus also contain forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of certain factors, including the risks faced by us.

USE OF PROCEEDS

Unless the applicable prospectus supplement states otherwise, we will use the net proceeds we receive from the sale of the securities offered hereby for general corporate purposes, which may include, among other things, investments in or advances to our subsidiaries, working capital, capital expenditures, stock repurchases, debt repayment or the financing of possible acquisitions. The applicable prospectus supplement relating to a particular offering of securities by us will identify the particular use of proceeds for that offering. Until we use the net proceeds from an offering, we may place the net proceeds in temporary investments or hold the net proceeds in deposit accounts at a banking subsidiary of the Company.

We will not receive any proceeds from the sale of shares of our common stock by the selling shareholder.

RATIOS

The following table reflects our ratio of earnings to fixed charges and ratio of earnings to fixed charges and preferred stock dividends for each of the years in the five-year period ended December 31, 2016, as well as for the three months ended March 31, 2017. Preferred stock dividends during the years ended December 31, 2011, 2012, 2013 and 2014 consisted of dividends on our Series C preferred stock, Series D preferred stock, Series E preferred stock and Series F preferred stock, all of which were converted into shares of our common stock in 2014. We did not pay any preferred stock dividends during the years ended December 31, 2015 and 2016, or during the three months ended March 31, 2017, because no shares of our preferred stock were outstanding during these periods. Consequently, the ratio of earnings to fixed charges and preferred stock dividends for these periods were the same as the ratio of earnings to fixed charges. On June 9, 2017, we issued 181 shares of our Series G preferred stock and 2,635,546 shares of our Fixed Rate Non-Voting Perpetual Non-Cumulative Preferred Stock, Series H (which we refer to as "Series H preferred stock") in connection with the Centru acquisition, which shares are not reflected in the following table. See "Description of Capital Stock" for additional information regarding our shares of Series G preferred stock and Series H preferred stock.

For purposes of computing the ratios of earnings to fixed charges and earnings to fixed charges and preferred stock dividends:

- earnings represent income from continuing operations before income taxes, plus fixed charges;
- fixed charges, excluding interest on deposits, include interest expense (other than on deposits), the portion of net rental expense deemed to be equivalent to interest on long-term debt, and discount amortization; and
- fixed charges, including interest on deposits, include all interest expense, the portion of net rental expense deemed to be equivalent to interest on long-term debt and discount amortization on long-term debt.

	For the three	For the years ended December 31,				
	months ended March 31,	2016	2015	2014	2013	2012
	2017					
Ratio of earnings to fixed charges:						
Excluding interest on deposits	6.26x	7.43x	6.73x	5.42x	6.75x	6.49x
Including interest on deposits	3.51x	4.01x	3.59x	2.78x	3.21x	2.60x
Ratio of earnings to fixed charges and preferred stock dividends:						
Excluding interest on deposits	6.26x	7.43x	6.73x	1.25x	2.23x	1.92x
Including interest on deposits	3.51x	4.01x	3.59x	1.19x	1.80x	1.54x

DESCRIPTION OF SECURITIES WE MAY OFFER

This prospectus contains summary descriptions of the common stock, preferred stock, debt securities, warrants and units that we may offer and sell from time to time. In addition, the selling shareholder may sell up to 954,277 shares of our common stock from time to time in one or more offerings. When one or more of these securities are offered in the future, a prospectus supplement will explain the particular terms of the securities and the extent to which these general provisions may apply. These summary descriptions and any summary descriptions in the applicable prospectus supplement do not purport to be complete descriptions of the terms and conditions of each security and are qualified in their entirety by reference to our articles of incorporation, our bylaws, Illinois law and any other documents referenced in such summary descriptions and from which such summary descriptions are derived. If any particular terms of a security described in the applicable prospectus

supplement differ from any of the terms described in this prospectus, then the terms described in this prospectus will be deemed superseded by the terms set forth in that prospectus supplement.

We may issue and sell, and the selling shareholder may sell, securities in book-entry form through one or more depositories, such as The Depository Trust Company, Euroclear or Clearstream, named in the applicable prospectus supplement. Each sale of a security in book-entry form will settle in immediately available funds through the applicable depository, unless otherwise stated. We and the selling shareholder will issue or sell the securities in registered form, without coupons, although we may issue the securities in bearer form if so specified in the applicable prospectus supplement. If any securities offered by us are to be listed or quoted on a securities exchange or quotation system, the applicable prospectus supplement will say so. The shares of our common stock that may be offered by the selling shareholder are listed on the Nasdaq Global Select Market.

DESCRIPTION OF CAPITAL STOCK

The following is a summary of the material terms, limitations, voting powers and relative rights of our capital stock as contained in our articles of incorporation, which is incorporated by reference herein. This summary does not purport to be a complete description of the terms and conditions of our capital stock in all respects and is subject to and qualified in its entirety by reference to our articles of incorporation, our bylaws, Illinois law and any other documents referenced in the summary descriptions and from which the summary descriptions are derived. Although we believe this summary covers the material terms and provisions of our capital stock set forth in our articles of incorporation, it may not contain all of the information that is important to you.

Authorized Shares of Capital Stock

Our articles of incorporation authorize the issuance of up to 35,000,000 shares of common stock, par value \$0.01 per share, up to 5,000,000 shares of non-voting common stock, par value \$0.01 per share, and up to 4,000,000 shares of preferred stock, par value \$2.00 per share. At June 29, 2017, we had issued and outstanding 19,194,963 shares of our common stock (which includes 109,113 of voting shares that are issuable upon the vesting of restricted stock awards outstanding as of such date), no shares of non-voting common stock, 181 shares of our Series G preferred stock and 2,635.5462 shares of our Series H preferred stock. We have reserved an additional 1,161,339 shares for issuance upon the exercise of outstanding stock options, 12,112 shares of common stock issuable upon the vesting of outstanding restricted stock unit awards and 809,012 shares of common stock in connection with awards that remain available for issuance under our Second Amended and Restated 2010 Long-Term Incentive Plan.

Common Stock

Governing Documents. The holders of shares of our common stock have the rights set forth in our articles of incorporation, our bylaws and Illinois law.

Dividends and Distributions. The holders of our common stock are entitled to share equally in any dividends that our board of directors may declare from time to time out of funds legally available for dividends, subject to limitations under Illinois law and any preferential rights of holders of our then outstanding preferred stock.

Ranking. Our common stock ranks junior with respect to dividend rights and rights upon liquidation, dissolution or winding up of the Company to all other securities and indebtedness of the Company.

Upon any voluntary or involuntary liquidation, dissolution or winding up of the Company, the holders of our common stock are entitled to share equally, on a per share basis, in all of our assets

available for distribution, after payment to creditors and subject to any prior distribution rights granted to holders of any then outstanding shares of preferred stock.

Conversion Rights. Our common stock is not convertible into any other shares of our capital stock.

Preemptive Rights. The holders of our common stock do not have any preemptive rights.

Voting Rights. The holders of our common stock are entitled to one vote per share on any matter to be voted on by the shareholders. The holders of our common stock are not entitled to cumulative voting rights with respect to the election of directors. A plurality of the shares voted shall elect all of the directors then standing for election at a meeting of shareholders at which a quorum is present.

Our board of directors is divided into three classes of directors, each serving a staggered three-year term. Class I directors hold office for a term expiring at the annual meeting of shareholders to be held in 2020, Class II directors hold office for a term expiring at the annual meeting of shareholders to be held in 2018 and Class III directors hold office for a term expiring at the annual meeting of shareholders to be held in 2019. At each annual meeting, the successors to the class of directors whose terms expire at that meeting will be elected for a term of office to expire at the third succeeding annual meeting after their election and until their successors have been duly elected and qualified.

Redemption. We have no obligation or right to redeem our common stock.

Registration Rights. We have entered into a Registration Rights Agreement, dated as of January 18, 2011 (as amended by an Amendment Agreement, dated May 11, 2011, and by Amendment No. 2 to Registration Rights Agreement, dated December 10, 2013), with the Richard E. Workman 2001 Trust, beneficial holder of more than six percent of our capital stock. Pursuant to the registration rights agreement, the Richard E. Workman 2001 Trust has the right to demand (but only once) that we, at our expense, prepare and file a registration statement to register under the Securities Act of 1933, as amended (which we refer to as the "Securities Act"), the shares of our common stock that it owns; *provided that* the aggregate fair market value of the common stock registered is at least \$5.0 million. The Richard E. Workman 2001 Trust also has piggyback registration rights, which give it the right to require us to include in a registration statement filed by us the shares of common stock it owns. The registration rights agreement terminates on the earlier of May 23, 2021, and the date on which no party with rights under the agreement owns any shares of our common stock.

We have also entered into a Registration Rights Agreement, dated as of April 7, 2014, with Andrew S. Love, Jr., Laurence A. Schiffer, James S. McDonnell III, John F. McDonnell, and certain other entities, all of whom received shares of our common stock as merger consideration in connection with our acquisition of Love Savings Holding Company in December 2014. Pursuant to the registration rights agreement, these shareholders have the right to demand (but only twice as to registrations on Form S-1 and three times as to registrations on Form S-3) that we, at our expense, prepare and file a registration statement to register under the Securities Act the shares of our common stock that they own, subject to customary conditions. These shareholders also have piggyback registration rights, which give them the right to require us to include in a registration statement filed by us the shares of common stock they own. The registration rights agreement terminates on the earlier of May 23, 2021, and the date on which no party with rights under the agreement owns any shares of our common stock.

Non-Voting Common Stock

The holders of our non-voting common stock are entitled to all rights and privileges afforded to holders of our common stock as described above under "— Common Stock," except the holders of our non-voting common stock are not entitled to vote on any matter to be voted on by the shareholders.

Preferred Stock

Upon authorization of our board of directors, we may issue shares of one or more series of our preferred stock from time to time. Our board of directors may, without any action by holders of common stock and except as may be otherwise provided in the terms of any series of preferred stock of which there are shares outstanding, adopt resolutions to designate and establish a new series of preferred stock. Upon establishing such a series of preferred stock, the board will determine the number of shares of preferred stock of that series that may be issued and the rights and preferences of that series of preferred stock. The rights of any series of preferred stock may include, among others:

- general or special voting rights;
- preferential liquidation rights;
- preferential cumulative or noncumulative dividend rights;
- redemption or put rights; and
- conversion or exchange rights.

We may issue shares of, or warrants to purchase shares of, one or more series of our preferred stock that have been designated from time to time, the terms of which might:

- adversely affect voting or other rights evidenced by, or amounts otherwise payable with respect to, the common stock or other series of preferred stock;
- discourage an unsolicited proposal to acquire us; or
- facilitate a particular business combination involving us.

Any of these actions could have an anti-takeover effect and discourage a transaction that some or a majority of our shareholders might believe to be in their best interests or in which our shareholders might receive a premium for their stock over our then market price.

Series G Preferred Stock

In connection with the Centrué acquisition, our board of directors established a series of 209 shares of Series G preferred stock. Dividends are payable on shares of Series G preferred stock at an annual rate of \$60.00 per share, payable quarterly and are cumulative. No dividends may be paid on shares of common stock until dividends are paid on the Series G preferred stock, other than those payable solely in Midland common stock and dividends paid on the Series H preferred stock. No shares of common stock or preferred stock (other than Series H preferred stock) may be purchased, redeemed or acquired by us without the approval of the holders of a majority of the Series G preferred stock.

Each holder of Series G preferred stock has the option, exercisable at their sole discretion, to sell, and we would be obligated to redeem, such holder's shares of Series G preferred stock. The per share price payable by us for such shares of Series G preferred stock will be equal to \$1,000 per share, plus any accrued but unpaid dividends.

Holders of Series G preferred stock are not entitled to voting rights, except as required by law and to approve the authorization or issuance of any shares of stock that rank senior or on parity with the Series G preferred stock.

Upon our dissolution, wind up, or liquidation, voluntary or otherwise, holders of Series G preferred stock will be entitled to receive, out of our assets available for distribution to shareholders, the amount of \$1,000 per share, plus accrued but unpaid dividends, before any payment or distribution may be made on shares of common stock or any other securities issued by us that rank junior to the Series G preferred stock.

Fixed Rate Non-Voting Perpetual Non-Cumulative Preferred Stock, Series H

In connection with the Centru acquisition, our board of directors established a series of 2,636 shares of Series H preferred stock. Dividends are payable on shares of Series H preferred stock at a rate of 12.5% per annum, payable quarterly and are non-cumulative. No dividends may be paid on shares of common stock, shares of preferred stock that rank junior to Series H preferred stock (other than dividends payable solely in shares of common stock), or shares of preferred stock that rank on parity with Series H preferred stock, if a dividend is not paid in full on the Series H preferred stock for a period of three calendar quarters from the date of the missing dividend payment date.

We have the option to redeem, in whole or in part, the shares of Series H preferred stock at any time and from time to time after July 29, 2019. The per share price payable by us for such shares of Series H preferred stock will be equal to \$1,000 per share, plus any accrued but unpaid dividends.

Holders of Series H preferred stock are not entitled to voting rights, except: (i) as required by law; (ii) to elect up to two directors if dividends have not been paid on the Series H preferred stock for an aggregate of eight quarters; (iii) to approve actions that would create a series of preferred stock ranking senior to the Series H preferred stock; (iv) to amend the statement of resolution establishing series for the Series H preferred stock that adversely affects the rights of the Series H preferred stock; (v) to approve a share exchange, reclassification, or merger or consolidation of the Company with another company, unless the shares of Series H preferred stock remain outstanding or are converted into or exchanged for preference securities of the surviving or resulting entity.

Upon our dissolution, wind up, or liquidation, voluntary or otherwise, holders of Series H preferred stock will be entitled to receive, out of our assets available for distribution to shareholders, the amount of \$1,000 per share, plus accrued but unpaid dividends, before any payment or distribution may be made on shares of common stock or any other securities issued by us that rank junior to the Series H preferred stock.

Anti-Takeover Provisions

Illinois law, banking laws and certain provisions of our articles of incorporation and bylaws could have the effect of delaying or deferring the removal of incumbent directors or delaying, deferring or discouraging another party from acquiring control of us, even if such removal or acquisition would be viewed by our shareholders to be in their best interests. These provisions, summarized below, are intended to encourage persons seeking to acquire control of us to first negotiate with our board of directors. These provisions also serve to discourage hostile takeover practices and inadequate takeover bids. We believe that these provisions are beneficial because the negotiation they encourage could result in improved terms of any unsolicited proposal.

Classified Board of Directors; Noncumulative Voting for Directors. Our articles of incorporation provide that our board of directors is classified into three classes of directors, with the members of one class to be elected each year, which prevents a majority of our directors from being removed at a single annual meeting. In addition, our articles of incorporation specify that, as permitted by the Illinois Business Corporation Act of 1983 (which we refer to as the "IBCA"), directors may be removed during their three-year terms only for "cause." See the discussion below under "—Filling of Board Vacancies; Removals" for the definition of "cause."

Our articles of incorporation also provide for noncumulative voting for directors, which may make it more difficult for a non-company nominee to be elected to our board of directors.

Authorized But Unissued Capital Stock. We have authorized but unissued shares of common stock, non-voting common stock, and preferred stock, and our board of directors may authorize the issuance of one or more series of preferred stock without shareholder approval. These shares could be used by

our board of directors to make it more difficult or to discourage an attempt to obtain control of us through a merger, tender offer, proxy contest or otherwise.

Limitation on Right to Call a Special Meeting of Shareholders. Our bylaws provide that special meetings of shareholders may only be called by our board or our president or by the holders of not less than 20% of our outstanding shares of capital stock entitled to vote for the purpose or purposes for which the meeting is being called.

Advance Notice Provisions. Our bylaws generally require a shareholder desiring to propose new business at a shareholder meeting to provide advance written notice to our corporate secretary, not less than 90 days nor more than 120 days prior to the date of the meeting, containing certain information about the shareholder and the business to be brought. Only business within the purposes described in the notice of the meeting may be conducted at a special meeting. This provision could delay shareholder actions that are favored by the holders of a majority of our outstanding stock until the next shareholders' meeting.

Additionally, our bylaws provide that nominations for directors must be made in accordance with the provisions of our bylaws, which generally require, among other things, that such nominations be provided in writing to our corporate secretary, not less than 90 days nor more than 120 days prior to the meeting, and that the notice to our corporate secretary contain certain information about the shareholder and the director nominee.

No Action By Written Consent of Shareholders. Our articles of incorporation provide that any action required or permitted to be taken by the holders of our capital stock must be effected at a duly called annual or special meeting of the holders of our capital stock and may not be effected by any consent in writing by our shareholders.

Filling of Board Vacancies; Removals. Any vacancies in our board of directors and any directorships resulting from any increase in the number of directors may be filled by the board, acting by not less than two-thirds of the directors then in office, although less than a quorum, and any directors so chosen will hold office until the next election of the class for which such directors have been chosen and until their successors have been elected and qualified. Furthermore, our articles of incorporation specify that directors may only be removed by shareholders for "cause," and that removal of a director for cause by our shareholders requires the affirmative vote of the holders of not less than 70% of the outstanding shares of capital stock entitled to vote generally in the election of directors. "Cause" will be deemed to exist only if the director whose removal is proposed has been convicted of a felony or has been adjudged by a court to be liable for gross negligence or willful misconduct in the performance of such director's duty to us and such adjudication is no longer subject to direct appeal.

Amendment of the Bylaws. Our articles of incorporation and bylaws provide that our bylaws may be altered, amended or repealed by our board without prior notice to or approval by our shareholders. Our bylaws may also be altered, amended or repealed by the affirmative vote of holders of not less than 70% of the outstanding shares of our capital stock entitled to vote generally in the election of directors. Accordingly, our board could take action to amend our bylaws in a manner that could have the effect of delaying, deferring or discouraging another party from acquiring control of us.

Supermajority Voting Provisions. Our articles of incorporation provide for certain heightened voting thresholds needed to consummate a change in control transaction, such as a merger, the sale of substantially all of our assets or other similar transaction. Accordingly, we will not be able to consummate a change in control transaction or sell all or substantially all of our assets without obtaining the affirmative vote of the holders of shares of our capital stock having at least 70% of the voting power of all outstanding capital stock entitled to vote thereon. Notwithstanding the foregoing, if at least 66²/₃% of our directors approve any such transaction, then the supermajority voting provisions

set forth in our articles of incorporation will not apply and only a majority vote of our shareholders will be required to approve such transaction.

Illinois Law. Our articles of incorporation expressly provide that Section 7.85 of the IBCA, which applies to interested shareholder transactions, will apply to the Company. Section 7.85 requires that, except in limited circumstances, a "business combination" with an "interested shareholder" be approved by (i) the affirmative vote of the holders of at least 80% of the combined voting power of the then outstanding shares entitled to vote generally in the election of directors; and (ii) the affirmative vote of a majority of the voting shares of stock held by "disinterested shareholders." A "disinterested shareholder" is a shareholder who is not an "interested shareholder" or an affiliate or an associate of an interested shareholder. An "interested shareholder" means: (i) a person that is the owner of 15% or more of the outstanding voting shares of the Company or is an affiliate or associate of the Company and was the owner of 15% or more of the outstanding voting shares of the Company at any time within the three year period immediately before the date on which it is sought to be determined whether the person is an interested shareholder; and (ii) the affiliates and associates of that person. This provision may have the effect of inhibiting a non-negotiated merger or other business combination involving us, even if such event would be beneficial to our shareholders.

Notwithstanding the foregoing, the higher vote requirement set forth in Section 7.85 of the IBCA will not be applicable to any transaction if either: (i) the transaction has been approved by 66²/₃% of the disinterested directors; or (ii) the transaction satisfies certain fair price and procedure requirements.

Consideration of Non-Shareholder Interests. Section 8.85 of the IBCA provides that, in discharging their duties, the board of directors, committees of the board, individual directors and individual officers of an Illinois corporation may, in considering the best long term and short term interests of the corporation, consider the effects of any action (including without limitation, action which may involve or relate to a change or potential change in control of the corporation) upon employees, suppliers and customers of the corporation or its subsidiaries, communities in which offices or other establishments of the corporation or its subsidiaries are located, and all other pertinent factors. Our articles of incorporation incorporate the concept in Section 8.85 of the IBCA and permit our board to consider, in connection with the exercise of its judgment in determining what is in the best interests of the Company and our shareholders when evaluating a potential change in control transaction, a variety of interests beyond the direct financial interests of our shareholders, including the social and economic effects of the transaction on the Company and the other elements of the communities in which we operate.

Banking Laws. The ability of a third party to acquire the Company is also subject to applicable banking laws and regulations. The Bank Holding Company Act of 1953, as amended (which we refer to as the BHCA), and the regulations thereunder require any "bank holding company" (as defined in the BHCA) to obtain the approval of the Federal Reserve prior to acquiring more than 5% of the outstanding shares of a class of our voting stock. Any person other than a bank holding company is required to obtain prior approval of the Federal Reserve to acquire 10% or more of the outstanding shares of a class of our voting stock under the Change in Bank Control Act of 1978. Federal law also prohibits any person or company from acquiring "control" of an FDIC-insured depository institution or its holding company without prior notice to the appropriate federal bank regulator. "Control" is conclusively presumed to exist upon the acquisition of 25% or more of the outstanding voting securities of a bank or bank holding company, but may arise under certain circumstances between 10% and 24.99% ownership. For purposes of calculating ownership thresholds under these banking regulations, bank regulators would likely at least take the position that the minimum number of shares, and could take the position that the maximum number of shares, of the Company's common stock that a holder is entitled to receive pursuant to securities convertible into or settled in the Company's common stock,

including pursuant to the Company's warrants to purchase the Company's common stock held by such holder, must be taken into account in calculating a shareholder's aggregate holdings of the Company's common stock.

DESCRIPTION OF DEBT SECURITIES

General

The debt securities that we may offer using this prospectus consist of notes, debentures or other evidences of indebtedness. Any debt securities that we offer and sell will be our direct obligations. Debt securities may be issued in one or more series. All debt securities of any one series need not be issued at the same time, and unless otherwise provided, a series of debt securities may be reopened, without the consent of the holders of outstanding debt securities, for issuance of additional debt securities of that series or to establish additional terms of that series of debt securities (with such additional terms applicable only to unissued or additional debt securities of that series). As required by the Trust Indenture Act of 1939, as amended (which we refer to as the "Trust Indenture Act"), for all debt securities that are publicly offered, our debt securities will be governed by a document called an indenture. The form of indenture is subject to any amendments or supplements that we may enter into with the trustee(s) setting forth the specific terms and conditions of the debt securities being issued. The indenture is filed as an exhibit to the registration statement of which this prospectus forms a part. The material terms of the indenture are summarized below and we refer you to the indenture for a detailed description of these material terms. Additional or different provisions that are applicable to a particular series of debt securities will, if material, be described in a prospectus supplement relating to the offering of debt securities of that series. These provisions may include, among other things and to the extent applicable, the following:

- the title of the debt securities, including, as applicable, whether the debt securities will be issued as senior debt securities, senior subordinated debt securities or subordinated debt securities, and any subordination provisions particular to the series of debt securities, if different from those described below under "—Subordinated Debt Securities;"
- any limit on the aggregate principal amount of the debt securities;
- if other than 100% of the aggregate principal amount, the percentage of the aggregate principal amount at which we will sell the debt securities (i.e., original issuance discount);
- the date or dates, whether fixed or extendable, on which the principal of the debt securities will be payable;
- the rate or rates, which may be fixed or variable, at which the debt securities will bear interest, if any, the date or dates from which any such interest will accrue, the interest payment dates on which we will pay any such interest, the basis upon which interest will be calculated if other than that of a 360-day year consisting of twelve 30-day months, and, in the case of registered securities, the record dates for the determination of holders to whom interest is payable;
- any provisions relating to the issuance of the debt securities of the series at an original issue discount;
- the place or places where the principal of, and any premium or interest on, the debt securities will be payable and, if applicable, where the debt securities may be surrendered for conversion or exchange;
- whether we may, at our option, redeem, repurchase or repay the debt securities, and if so, the price or prices at which, the period or periods within which, and the terms and conditions upon which, we may redeem, repurchase or repay the debt securities, in whole or in part, pursuant to any sinking fund or otherwise;

- if other than 100% of the aggregate principal amount thereof, the portion of the principal amount of the debt securities which will be payable upon declaration of acceleration of the maturity date thereof or provable in bankruptcy, or, if applicable, which is convertible or exchangeable;
- any obligation we may have to redeem, purchase or repay the debt securities pursuant to any sinking fund or analogous provisions or at the option of a holder of debt securities, and the price or prices at which, the currency in which and the period or periods within which, and the other terms and conditions upon which, the debt securities will be redeemed, purchased or repaid, in whole or in part, pursuant to any such obligation, and any provision for the remarketing of the debt securities;
- whether the debt securities will be registered securities or unregistered securities or both, and the rights of the holders of the debt securities to exchange unregistered securities for registered securities, or vice-versa, and the circumstances under which any such exchanges, if permitted, may be made;
- the denominations, which may be in U.S. dollars or in any foreign currency, in which the debt securities will be issued, if other than denominations of \$1,000 and any integral multiple thereof;
- whether the debt securities will be issued in the form of certificated debt securities, and if so, the form of the debt securities (or forms thereof if unregistered and registered securities are issuable in that series), including the legends required by law or as we deem necessary or appropriate, the form of any coupons or temporary global security which may be issued and the forms of any other certificates which may be required under the indenture or which we may require in connection with the offering, sale, delivery or exchange of the debt securities;
- if other than U.S. dollars, the currency or currencies in which payments of principal, interest and other amounts payable with respect to the debt securities will be denominated, payable, redeemable or repurchasable, as the case may be;
- whether the debt securities may be issuable in tranches;
- the obligations, if any, we may have to permit the conversion or exchange of the debt securities into common stock, preferred stock or other capital stock or property, or a combination thereof, and the terms and conditions upon which such conversion or exchange will be effected (including the conversion price or exchange ratio), and any limitations on the ownership or transferability of the securities or property into which the debt securities may be converted or exchanged;
- any trustees, authenticating or paying agents, transfer agents or registrars or any other agents with respect to the debt securities;
- if the debt securities do not bear interest, the applicable dates required under the indenture for furnishing information to the trustee regarding the holders of the debt securities;
- any deletions from, modifications of or additions to (i) the events of default with respect to the debt securities or (ii) the rights of the trustee or the holders of the debt securities in connection with events of default;
- any deletions from, modifications of or additions to the covenants with respect to the debt securities;
- if the amount of payments of principal of, and make-whole amount, if any, and interest on the debt securities may be determined with reference to an index, the manner in which such amount will be determined;

- whether the debt securities will be issued in whole or in part in the global form of one or more debt securities and, if so, the depositary for such debt securities, the circumstances under which any such debt security may be exchanged for debt securities registered in the name of, and under which any transfer of debt securities may be registered in the name of, any person other than such depositary or its nominee, and any other provisions regarding such debt securities;
- whether, under what circumstances and the currency in which, we will pay additional amounts on the debt securities to any holder of the debt securities who is not a U.S. person in respect of any tax, assessment or governmental charge and, if so, whether we will have the option to redeem such debt securities rather than pay such additional amounts (and the terms of any such option);
- whether the debt securities, in whole or specified parts, will be defeasible, and, if the securities may be defeased, in whole or in specified part, any provisions to permit a pledge of obligations other than certain government obligations to satisfy the requirements of the indenture regarding defeasance of securities and, if other than by resolution of our board of directors, the manner in which any election to defease the debt securities will be evidenced;
- whether the debt securities will be secured by any property, assets or other collateral and, if so, a general description of the collateral and the terms of any related security, pledge or other agreements;
- the persons to whom any interest on the debt securities will be payable, if other than the registered holders thereof on the regular record date therefor;
- the dates on which interest, if any, will be payable and the regular record dates for interest payment dates;
- any restrictions, conditions or requirements for transfer of the debt securities; and
- any other material terms or conditions upon which the debt securities will be issued.

Unless otherwise indicated in the applicable prospectus supplement, we will issue debt securities in fully registered form without coupons and in denominations of \$1,000 and in integral multiples of \$1,000, and interest will be computed on the basis of a 360-day year of twelve 30-day months. If any interest payment date or the maturity date falls on a day that is not a business day, then the payment will be made on the next business day without additional interest and with the same effect as if it were made on the originally scheduled date.

Unless otherwise indicated in the applicable prospectus supplement, the trustee will act as paying agent and registrar for the debt securities under the indenture. We may also act as paying agent under the indenture.

The applicable prospectus supplement will contain a description of U.S. federal income tax consequences relating to the debt securities, to the extent applicable.

Covenants

The applicable prospectus supplement will describe any covenants, such as restrictive covenants restricting us or any of our subsidiaries from incurring, issuing, assuming or guarantying any indebtedness or restricting us or any of our subsidiaries from paying dividends or acquiring any of our or its capital stock.

Consolidation, Merger and Transfer of Assets

Unless we indicate otherwise in the applicable prospectus supplement, the indenture will permit a consolidation or merger between us and another entity and/or the sale, conveyance or lease by us of all or substantially all of our property and assets; provided, however, that:

- we are the surviving or continuing entity, or the resulting or acquiring entity, if other than us, is organized and existing under the laws of a U.S. jurisdiction and assumes, pursuant to a supplemental indenture, all of our responsibilities and liabilities under the indenture, including the payment of all amounts due on the debt securities and performance of the covenants in the indenture;
- immediately after the transaction, and giving effect to the transaction, no event of default under the indenture exists; and
- we have delivered to the trustee an officers' certificate stating that the transaction and, if a supplemental indenture is required in connection with the transaction, the supplemental indenture, comply with the indenture and that all conditions precedent to the transaction contained in the indenture have been satisfied.

If we consolidate or merge with or into any other entity, or sell or lease all or substantially all of our assets in compliance with the terms and conditions of the indenture, the resulting or acquiring entity will be substituted for us in the indenture and the debt securities with the same effect as if it had been an original party to the indenture and the debt securities. As a result, such successor entity may exercise our rights and powers under the indenture and the debt securities, in our name, and, except in the case of a lease, we will be released from all our liabilities and obligations under the indenture and under the debt securities.

Notwithstanding the foregoing, we may transfer all of our property and assets to another entity if, immediately after giving effect to the transfer, such entity is our wholly owned subsidiary. The term "wholly owned subsidiary" means any subsidiary in which we and/or our other wholly owned subsidiaries own all of the outstanding capital stock.

Modification and Waiver

Unless we indicate otherwise in the applicable prospectus supplement, under the indenture, some of our rights and obligations and some of the rights of the holders of the debt securities may be modified or amended with the consent of the holders of not less than a majority in aggregate principal amount of the outstanding debt securities affected by the modification or amendment. However, the following modifications and amendments will not be effective against any holder without its consent:

- a change in the stated maturity date of any payment of principal or interest;
- a reduction in the principal amount of, or interest on, any debt securities;
- an alteration or impairment of any right to convert at the rate or upon the terms provided in the indenture;
- a change in the currency in which any payment on the debt securities is payable;
- an impairment of a holder's right to sue us for the enforcement of payments due on the debt securities; or
- a reduction in the percentage of outstanding debt securities required to consent to a modification or amendment of the indenture or required to consent to a waiver of compliance with certain provisions of the indenture or certain defaults under the indenture.

Under the indenture, the holders of not less than a majority in aggregate principal amount of the outstanding debt securities may, on behalf of all holders of the debt securities:

- waive compliance by us with certain restrictive provisions of the indenture; and
- waive any past default under the indenture in accordance with the applicable provisions of the indenture, except a default in the payment of the principal of, or interest on, any series of debt securities.

Events of Default

Unless we indicate otherwise in the applicable prospectus supplement, "event of default" under the indenture will mean, with respect to any series of debt securities, any of the following:

- default in the payment of any interest upon any security of such series as and when it becomes due and payable, and continuance of such default for a period of 30 days;
- default in the payment of the principal of the securities of such series as and when it becomes due and payable either at maturity, upon redemption (for any sinking fund payment or otherwise), by declaration or otherwise;
- our failure to observe or perform any of our other covenants or agreements in the securities of such series, or in the Indenture and relating to such series, for a period of 90 days after the date on which written notice specifying such failure and requiring us to remedy the failure and stating that such notice is a "Notice of Default" shall have been given to us in accordance with the indenture by the trustee for the securities of such series, or to us and the trustee by the holders of not less than 25% in aggregate principal amount at maturity of the securities of such series then outstanding;
- if we make an assignment for the benefit of creditors, or file a petition in bankruptcy; or we are adjudicated insolvent or bankrupt, or petition or apply to any court having jurisdiction for the appointment of a receiver, trustee, liquidator or sequestrator of, or for, us or any substantial portion of our property; or we commence any proceeding relating to us or any substantial portion of our property under any insolvency, reorganization, arrangement or readjustment of debt, dissolution, winding-up, adjustment, composition or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, which we refer to as a "proceeding"; or if there is commenced against us any proceeding and an order approving the petition is entered, or such proceeding remains undischarged or unstayed for a period of 90 days; or a receiver, trustee, liquidator or sequestrator of, or for, us or any substantial portion of our property is appointed and is not discharged within a period of 90 days; or we by any act indicate consent to or approval of or acquiescence in any proceeding or the appointment of a receiver, trustee, liquidator or sequestrator of, or for, us or any substantial portion of our property; provided that a resolution or order for our winding-up with a view to our consolidation, amalgamation or merger with another entity or the transfer of our assets as a whole, or substantially as a whole, to such other entity as permitted by the indenture does not make these rights and remedies enforceable if such entity, as a part of such consolidation, amalgamation, merger or transfer, and within 90 days from the passing of the resolution or the date of the order, complies with the conditions described under "Consolidation, Merger and Transfer of Assets;" or
- any other event of default provided in the supplemental indenture or board resolution under which such series of securities is issued or in the form of security for such series.

Unless we indicate otherwise in the applicable prospectus supplement, if an event of default occurs and continues, the trustee or the holders of not less than 25% in aggregate principal amount of the outstanding debt securities of such series may declare the entire principal of all the debt securities to

be due and payable immediately, except that, if the event of default described in the fourth bullet point above occurs, the entire principal of all of the debt securities of such series will become due and payable immediately without any act on the part of the trustee or holders of the debt securities. If such a declaration occurs, the holders of a majority of the aggregate principal amount of the outstanding debt securities of such series can, subject to conditions, rescind the declaration.

The indenture requires us to furnish to the trustee, not less often than annually, a certificate from our principal executive officer, principal financial officer or principal accounting officer, as the case may be, as to such officer's knowledge of our compliance with all conditions and covenants under the indenture. The trustee may withhold notice to the holders of debt securities of any default, except defaults in the payment of principal of, or interest on, any debt securities if the trustee in good faith determines that the withholding of notice is in the interests of the holders. For purposes of this paragraph, "default" means any event which is, or after notice or lapse of time or both would become, an event of default under the indenture.

The trustee is not obligated to exercise any of its rights or powers under the indenture at the request, order or direction of any holders of debt securities, unless the holders offer the trustee satisfactory security or indemnity. If satisfactory security or indemnity is provided, then, subject to other rights of the trustee, the holders of a majority in aggregate principal amount of the outstanding debt securities may direct the time, method and place of:

- conducting any proceeding for any remedy available to the trustee; or
- exercising any trust or power conferred upon the trustee.

The holder of a debt security will have the right to begin any proceeding with respect to the indenture or for any remedy only if:

- the holder has previously given the trustee written notice of a continuing event of default;
- the holders of not less than a majority in aggregate principal amount of the outstanding debt securities have made a written request of, and offered the required security or indemnity to, the trustee to begin such proceeding;
- the trustee has not started such proceeding within 60 days after receiving the request and offer of security or indemnity; and
- no direction inconsistent with such written request has been given to the trustee under the indenture.

However, the holder of any debt security will have an absolute right to receive payment of principal of, and interest on, the debt security when due and to institute suit to enforce payment.

Satisfaction and Discharge; Defeasance

Satisfaction and Discharge of Indenture. Unless we indicate otherwise in the applicable prospectus supplement, if at any time,

- we have paid the principal of and interest on all the debt securities of any series, except for debt securities which have been destroyed, lost or stolen and which have been replaced or paid in accordance with the indenture, as and when the same has become due and payable;
- we have delivered to the trustee for cancellation all debt securities of any series theretofore authenticated, except for debt securities of such series which have been destroyed, lost or stolen and which have been replaced or paid as provided in the indenture; or
- all the debt securities of such series not theretofore delivered to the trustee for cancellation have become due and payable, or are by their terms to become due and payable within one year

or are to be called for redemption within one year, and we have deposited irrevocably with the trustee, in trust, sufficient money or government obligations, or a combination thereof, to pay the principal, any interest and any other sums due on the debt securities, on the dates the payments are due or become due under the indenture and the terms of the debt securities;

then the indenture shall cease to be of further effect with respect to the debt securities of such series, except for (i) rights of registration of transfer and exchange, and our right of optional redemption, (ii) substitution of mutilated, defaced, destroyed, lost or stolen debt securities, (iii) rights of holders to receive payments of principal thereof and interest thereon upon the original stated due dates therefor (but not upon acceleration) and remaining rights of the holders to receive mandatory sinking fund payments, if any, (iv) the rights, powers, trusts, duties and immunities of the trustee under the indenture and our obligations in connection therewith, and (v) the rights of the holders of such series of debt securities as beneficiaries thereof with respect to the property so deposited with the trustee payable to all or any of them.

Defeasance and Covenant Defeasance. Unless we indicate otherwise in the applicable prospectus supplement, we may elect with respect to any debt securities of any series:

- to defease and be discharged from all of our obligations with respect to such debt securities ("defeasance"), with certain exceptions described below; or
- to be released from our obligations with respect to such debt securities under such covenants as may be specified in the applicable prospectus supplement, and any omission to comply with those obligations will not constitute a default or an event of default with respect to such debt securities ("covenant defeasance").

We must comply with the following conditions before the defeasance or covenant defeasance can be effected:

- we must irrevocably deposit with the indenture trustee or other qualifying trustee, trust funds in trust solely for the benefit of the holders of such debt securities, sufficient money or government obligations, or a combination thereof, to pay the principal, any interest and any other sums on the due dates for those payments;
- we must deliver to the trustee an opinion of counsel to the effect that the holders of such debt securities will not recognize income, gain or loss for federal income tax purposes as a result of such defeasance or covenant defeasance, as the case may be, to be effected with respect to such debt securities and will be subject to federal income tax on the same amount, in the same manner and at the same times as would be the case if such defeasance or covenant defeasance, as the case may be, had not occurred; and
- we must deliver to the trustee an officers' certificate and opinion of counsel stating that all conditions precedent relating to such defeasance or covenant defeasance, as the case may be, have been complied with.

In connection with defeasance, any irrevocable trust agreement contemplated by the indenture must include, among other things, provision for (i) payment of the principal of and interest on such debt securities, if any, appertaining thereto when due (by redemption, sinking fund payments or otherwise), (ii) the payment of the expenses of the trustee incurred or to be incurred in connection with carrying out such trust provisions, (iii) rights of registration, transfer, substitution and exchange of such debt securities in accordance with the terms stated in the indenture, and (iv) the rights, powers, trusts, duties and immunities of the trustee under the indenture and our obligations in connection therewith as stated in the indenture.

The accompanying prospectus supplement may further describe any provisions permitting or restricting defeasance or covenant defeasance with respect to the debt securities of a particular series.

Subordination of the Subordinated Debt Securities

Unless we indicate otherwise in the applicable prospectus supplement, the indenture provides that the subordinated debt securities will be unsecured and will rank equally with any of our future unsecured subordinated indebtedness, and will be subordinated in right of payment to all existing and future senior indebtedness of the Company. The subordinated debt securities will be structurally subordinated to all existing and future indebtedness, liabilities and other obligations of our subsidiaries (including, in the case of the Bank, deposits) which means that creditors (including, in the case of the Bank, its depositors) and any preferred equity holders of our subsidiaries generally will be paid from those subsidiaries' assets before holders of the subordinated debt securities would have any claims to those assets.

"Senior indebtedness" means the principal of, and premium, if any, and interest on (i) all "indebtedness for money borrowed" of the Company whether outstanding on the date of execution of the Subordinated Indenture or thereafter created, assumed or incurred, except for indebtedness that expressly states that it is subordinate in right of payment to indebtedness for borrowed money of the Company and (ii) any deferrals, renewals or extensions of any such indebtedness for money borrowed. "Senior indebtedness" excludes, among other things, trade creditor indebtedness arising in the ordinary course of business and any indebtedness between or among the Company and its affiliates.

The term "indebtedness for money borrowed" means:

- any obligation of, or any obligation guaranteed by, the Company for the repayment of money borrowed, whether or not evidenced by bonds, debentures, notes or other written instruments;
- any off-balance sheet guarantee obligation;
- any obligation under a direct credit substitute, including any letters of credit, bankers' acceptance, security purchases facility or similar agreement;
- any capitalized lease obligation;
- any deferred obligation for payment of the purchase price of any property or assets;
- all obligations of the type referred to above of other persons for the payment of which the Company is responsible or liable as obligor, guarantor or otherwise; and
- all obligations of the type referred to above of other persons secured by any lien on any property or asset of the Company, whether or not such obligation is assumed by the Company.

The subordinated debt securities will also be subordinated in right of payment to all "other company obligations," which is defined to include obligations of the Company associated with derivative products such as interest rate and currency exchange contracts, foreign exchange contracts, commodity contracts, or any similar arrangements, unless the instrument by which the Company incurred, assumed or guaranteed the obligation expressly provides that it is subordinate or junior in right of payment to any other indebtedness or obligations of the Company.

Upon the liquidation, dissolution, winding up, or reorganization of the Company or the Bank, we must pay to the holders of all senior indebtedness of the Company the full amounts of principal of, and premium, if any, and interest on, that senior indebtedness before any payment is made on the subordinated debt securities. If, after we have made those payments on the senior indebtedness of the Company (i) there are amounts available for payment on the subordinated debt securities (such amounts being defined in the indenture as "excess proceeds") and (ii) at such time, any creditors in respect of "other company obligations" have not received their full payments, then the Company shall first use such excess proceeds to pay in full all "other company obligations" before the Company makes any payment on the subordinated debt securities.

Because of the subordination provisions and the obligation to pay excess proceeds described above, in the event of insolvency of the Company or the Bank, holders of the subordinated debt securities may recover less ratably than holders of senior indebtedness of the Company, creditors with respect to "other company obligations" and other creditors of the Company.

In some circumstances relating to the Company's or the Bank's liquidation, receivership, dissolution, winding-up, reorganization, insolvency or similar proceedings, the holders of all senior indebtedness may be entitled to receive payment in full before the holders of the subordinated debt securities will be entitled to receive any payment on the subordinated debt securities. In addition, we may make no payment on the subordinated debt securities prior to payment in full of all senior indebtedness in the event that (i) any security of any series is declared due and payable prior to its expressed maturity because of an event of default under the Subordinated Indenture or (ii) there is a default on any senior indebtedness which permits the holders of the senior indebtedness to accelerate the maturity of the senior indebtedness if either (A) written notice of such default is given to us and to the trustee, provided that judicial proceedings are commenced in respect of such default within 180 days in the case of a default in payment of principal or interest and within 90 days in the case of any other default after the giving of such notice and provided further that only one such notice shall be given in any twelve month period or (B) judicial proceedings are pending in respect of such default. By reason of this subordination in favor of the holders of senior indebtedness, in the event of a liquidation, receivership, dissolution, winding-up, reorganization, insolvency or similar proceeding, our creditors who are not holders of senior indebtedness may recover less, proportionately, than holders of senior indebtedness.

In addition, the subordinated debt securities may be fully subordinated to interests held by the U.S. government in the event of a receivership, insolvency, liquidation, or similar proceeding by the Company, including a proceeding under the orderly liquidation authority provisions of the Dodd-Frank Act.

Global Securities

Unless otherwise indicated in the applicable prospectus supplement, each debt security offered by this prospectus will be issued in the form of one or more global debt securities representing all or part of that series of debt securities. This means that we will not issue certificates for that series of debt securities to the holders. Instead, a global debt security representing that series will be deposited with, or on behalf of, a securities depository and registered in the name of the depository or a nominee of the depository. Any such depository must be a clearing agency registered under the Securities Exchange Act of 1934, as amended (which we refer to as the "Exchange Act"). We will describe the specific terms of the depository arrangement with respect to a series of debt securities to be represented by a global security in the applicable prospectus supplement.

Notices

We will give notices to holders of the debt securities by mail at the addresses listed in the security register or, with respect to global securities, in accordance with the rules, policies and procedures of the applicable securities depository.

Governing Law

The indenture and the debt securities will be governed by, and construed in accordance with, the laws of the State of New York, except to the extent the Trust Indenture Act is applicable.

Regarding the Trustee

General. From time to time, we may maintain deposit accounts and conduct other banking transactions with the trustee to be appointed under the indenture or its affiliates in the ordinary course of business.

Resignation or Removal of Trustee. If the trustee has or acquires a conflicting interest within the meaning of the Trust Indenture Act, the trustee must either eliminate its conflicting interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and the indenture. Any resignation will require the appointment of a successor trustee under the indenture in accordance with the terms and conditions of the indenture.

The trustee may resign or be removed by us with respect to one or more series of debt securities and a successor trustee may be appointed to act with respect to any such series. The holders of a majority in aggregate principal amount of the debt securities of any series may remove the trustee with respect to the debt securities of such series.

Annual Trustee Report to Holders of Debt Securities. The trustee will be required to submit certain reports to the holders of the debt securities regarding, among other things, the trustee's eligibility to serve as such, the priority of the trustee's claims regarding advances made by it, and any action taken by the trustee materially affecting the debt securities.

Certificates and Opinions to Be Furnished to Trustee. The indenture provides that, in addition to other certificates or opinions specifically required by other provisions of the indenture, every application by us for action by the trustee must be accompanied by a certificate from one or more of our officers and an opinion of counsel (who may be our counsel) stating that, in the opinion of the signers, all conditions precedent to such action have been complied with by us.

DESCRIPTION OF WARRANTS

We may issue warrants for the purchase of debt securities, preferred stock, common stock, other securities of the Company or any combination of the foregoing. Warrants may be issued alone or together with securities offered by any prospectus supplement and may be attached to, or separate from, those securities. The particular terms of any warrants will be described more specifically in the prospectus supplement relating to such warrants.

The prospectus supplement relating to any warrants we are offering will include specific terms relating to the offering. We will file the form of any warrant agreement with the SEC, and you should read the warrant agreement for provisions that may be important to you. The prospectus supplement will include some or all of the following information:

- the title and specific designation of the warrants;
- the aggregate number of warrants offered;
- the amount of warrants outstanding, if any;
- the designation, number and terms of the securities purchasable upon exercise of the warrants, and procedures that will result in the adjustment of those numbers;
- the exercise price or prices of the warrants;
- the dates or periods during which the warrants are exercisable;
- the designation and terms of any securities with which the warrants are issued;
- if the warrants are issued as a unit with another security, the date, if any, on and after which the warrants and the other security will be separately transferable;
- if the exercise price is not payable in U.S. dollars, the foreign currency, currency unit or composite currency in which the exercise price is denominated;

- any minimum or maximum amount of warrants that may be exercised at any one time;
- the anti-dilution, redemption or call provisions of the warrants, if any;
- if applicable, the identity of the warrant agent for the warrants and of any other depositaries, execution or paying agents, transfer agents, registrars or other agents;
- any terms, procedures and limitations relating to the transferability, exchange or exercise of the warrants; and
- any other material terms of the warrants.

Before exercising their warrants, holders of warrants will not have any of the rights of holders of the securities purchasable upon such exercise, including the right to receive dividends, if any, or payments upon our liquidation, dissolution or winding-up, or to exercise voting rights, if any.

DESCRIPTION OF UNITS

As specified in the applicable prospectus supplement, we may issue units consisting of one or more debt securities, shares of common stock, shares of preferred stock or warrants, or any combination of such securities, including guarantees of any securities.

A prospectus supplement and any other offering materials relating to any units issued under the registration statement containing this prospectus will specify the terms of the units, including:

- the terms of the units and of any of the debt securities, common stock, preferred stock or warrants and guarantees comprising the units, including whether and under what circumstances the securities comprising the units may be traded separately;
- a description of the terms of any unit agreement governing the units; and
- a description of the provisions for the payment, settlement, transfer or exchange of the units.

SELLING SHAREHOLDER

This prospectus also relates to the possible resale of up to 954,277 shares of our common stock by one of our shareholders, the Richard E. Workman 2001 Trust, who, together with its donees, pledgees, assignees, transferees, distributees or other successors in interest, we refer to in this prospectus as the "selling shareholder." The selling shareholder has not had any position, office or material relationship with us or any of our affiliates within the past three years.

The following table details the name of the selling shareholder, the number of shares of common stock held by the selling shareholder, and the number of shares that may be offered by the selling shareholder for resale under this prospectus. Since the selling shareholder may sell all, some or none of the common shares covered by this prospectus, no estimate can be made of the number of common shares that will be sold by the selling shareholder pursuant to this prospectus or that will be owned by the selling shareholder upon completion of the offering. The following table has been prepared on the assumption that all shares offered for resale by the selling shareholder under this prospectus will be sold to parties unaffiliated with the selling shareholder.

<u>Name of Selling Shareholder</u>	<u>Prior to the Offering</u>		<u>Number of Shares of Common Stock Being Registered for Resale</u>	<u>After the Offering</u>	
	<u>Number of Shares of Common Stock Beneficially Owned</u>	<u>Percent of Shares of Common Stock Outstanding</u>		<u>Number of Shares of Common Stock Beneficially Owned</u>	<u>Percent of Shares of Common Stock Outstanding</u>
Richard E. Workman 2001 Trust	954,277	5.0%	954,277	—	—

PLAN OF DISTRIBUTION

We or the selling shareholder may sell the securities covered by this prospectus from time to time at market prices prevailing at the time of sale, at prices related to such prevailing market prices at the time of sale, at negotiated prices or at fixed prices, which may change from time to time. We or the selling shareholder may sell the securities directly to one or more purchasers, through agents, to dealers, through underwriters, brokers or dealers, block trades, privately negotiated transactions or through a combination of any of these sales methods or through any other method permitted by law (including in "at the market" equity offerings as defined in Rule 415 of the Securities Act). We reserve the right to accept or reject, in whole or in part, any proposed purchase of securities, whether the purchase is to be made directly or through agents.

Each time that we or the selling shareholder use this prospectus to sell our securities, we will also provide a prospectus supplement, if required, that contains the specific terms of the offering, including:

- the name or names of the underwriters, dealers or agents, if any, and the types and amounts of securities underwritten or purchased by each of them;
- the public offering price of the securities and the proceeds we will receive from the sale;
- any over-allotment options under which underwriters may purchase additional securities from us;
- any agency fees or underwriting discounts or other items constituting agents' or underwriters' compensation;
- any discounts, commissions or concessions allowed or reallowed or paid to dealers; and
- any securities exchange or market on which the securities may be listed.

Only underwriters that we have named in a prospectus supplement will be underwriters of the securities offered by that prospectus supplement.

If underwriters are used in the sale, they will acquire the securities for their own account and may resell the securities from time to time in one or more transactions at a fixed public offering price or at varying prices determined at the time of sale. The obligations of the underwriters to purchase the securities will be subject to the conditions set forth in the applicable underwriting agreement. We or the selling shareholder may offer the securities to the public through underwriting syndicates represented by managing underwriters or by underwriters without a syndicate. Subject to certain conditions, the underwriters will be obligated to purchase all of the securities offered by the prospectus supplement, other than securities covered by any over-allotment option. Any public offering price and any discounts or concessions allowed or reallowed or paid to dealers may change from time to time. We or the selling shareholder may use underwriters with whom we or the selling shareholder has a material relationship. We will describe in the prospectus supplement, naming the underwriter, the nature of any such relationship.

We or the selling shareholder may sell securities directly or through agents we or the selling shareholder designate from time to time. We will name any agent involved in the offering and sale of securities and we will describe any commissions we or the selling shareholder will pay the agent in the prospectus supplement. Unless the prospectus supplement states otherwise, the agent will act on a best-efforts basis for the period of its appointment.

We or the selling shareholder may authorize agents or underwriters to solicit offers by certain types of institutional investors to purchase securities from us or the selling shareholder at the public offering price set forth in the prospectus supplement pursuant to delayed delivery contracts providing for payment and delivery on a specified date in the future. We will describe the conditions to these contracts and the commissions we or the selling shareholder must pay for solicitation of these contracts in the applicable prospectus supplement.

We or the selling shareholder may provide agents and underwriters with indemnification against civil liabilities, including liabilities under the Securities Act, or contribution with respect to payments that the agents or underwriters may make with respect to these liabilities. Agents and underwriters may engage in transactions with, or perform services for, us or the selling shareholder in the ordinary course of business.

All securities we may offer, other than common stock or other outstanding securities, will be new issues of securities with no established trading market. Any underwriters may make a market in these securities, but will not be obligated to do so and may discontinue any market making at any time without notice. We cannot guarantee the liquidity of the trading markets for any securities.

Any underwriter may engage in over-allotment, stabilizing transactions, short-covering transactions and penalty bids in accordance with Regulation M under the Exchange Act. Over-allotment involves sales in excess of the offering size, which create a short position. Stabilizing transactions permit bids to purchase the underlying security so long as the stabilizing bids do not exceed a specified maximum price. Syndicate-covering or other short-covering transactions involve purchases of the securities, either through exercise of the over-allotment option or in the open market after the distribution is completed, to cover short positions. Penalty bids permit the underwriters to reclaim a selling concession from a dealer when the securities originally sold by the dealer are purchased in a stabilizing or covering transaction to cover short positions. Those activities may cause the price of the securities to be higher than it would otherwise be. If commenced, the underwriters may discontinue any of the activities at any time.

Under the securities laws of some states, to the extent applicable, the securities may be sold in such states only through registered or licensed brokers or dealers. In addition, if our common stock is no longer listed on the NASDAQ Global Select Market or another national securities exchange, in some states the securities may not be sold unless such securities have been registered or qualified for sale in such state or an exemption from registration or qualification is available and is complied with.

LEGAL MATTERS

Certain legal matters in connection with any offering of securities made by this prospectus will be passed upon for us by our counsel Barack Ferrazzano Kirschbaum & Nagelberg LLP of Chicago, Illinois. If the securities are being distributed in an underwritten offering, certain legal matters will be passed upon for the underwriters by counsel identified in the related prospectus supplement.

EXPERTS

The consolidated financial statements of the Company as of December 31, 2016 and 2015, and for each of the years in the three-year period ended December 31, 2016 have been incorporated by reference herein and in the registration statement in reliance upon the report of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We are subject to the informational requirements of the Exchange Act and file with the SEC proxy statements, Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, as required of a U.S. listed company. You may read and copy any document we file at the SEC's public reference room at 100 F Street, N.E., Room 1580, Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room. Our SEC filings are also available to the public from the SEC's web site at www.sec.gov or on our website at www.midlandsb.com. However, other than our available SEC filings, the information on, or that can be accessible through, our website does not constitute a part of, and is not incorporated by reference in,

this prospectus. Written requests for copies of the documents we file with the SEC should be directed to Midland States Bancorp, Inc., 1201 Network Centre Drive, Effingham, Illinois 62401, Attention: Corporate Secretary, telephone: (217) 342-7321.

This prospectus is part of a registration statement on Form S-3 filed by us with the SEC under the Securities Act. As permitted by the SEC, this prospectus does not contain all the information in the registration statement filed with the SEC. For a more complete understanding of this offering, you should refer to the complete registration statement, including exhibits, on Form S-3 that may be obtained as described above. Statements contained in this prospectus about the contents of any contract or other document are not necessarily complete. If we have filed any contract or other document as an exhibit to the registration statement or any other document incorporated by reference in the registration statement, you should read the exhibit for a more complete understanding of the contract or other document or matter involved. Each statement regarding a contract or other document is qualified in its entirety by reference to the actual contract or other document.

INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

The SEC allows us to incorporate by reference the information that we file with it into this prospectus, which means that we can disclose important information to you by referring you to other documents. The information incorporated by reference is an important part of this prospectus. We incorporate by reference the following documents and any future filings made with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this prospectus and prior to the termination of this offering, as well as any filings after the date of the registration statement of which this prospectus forms a part and prior to the effectiveness of such registration statement, but excluding, in each case, information "furnished" rather than "filed" and information that is modified or superseded by subsequently filed documents prior to the termination of this offering:

- our Annual Report on Form 10-K for the year ended December 31, 2016, filed with the SEC on March 10, 2017;
- our Quarterly Report on Form 10-Q, filed with the SEC on May 10, 2017;
- our Current Reports on Form 8-K filed on January 26, 2017 (Film No. 17550372), February 7, 2017, March 31, 2017, May 2, 2017, May 3, 2017 and June 12, 2017; and
- the description of our capital stock included in our Registration Statement on Form S-4 (SEC File No. 333-216708) filed with the SEC on April 25, 2017, and all amendments or reports filed for the purpose of updating such description.

We will provide without charge, upon written or oral request, a copy of any or all of the documents that are incorporated by reference into this prospectus and a copy of any or all other contracts or documents which are referred to in this prospectus. Requests should be directed to:

Midland States Bancorp, Inc.
Attention: Corporate Secretary
1201 Network Centre Drive
Effingham, Illinois 62401
Telephone number: (217) 342-7321

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution

The following table sets forth our estimated expenses to be incurred in connection with the issuance and distribution of the securities being registered, other than underwriting discounts and commissions. We will pay all of these expenses.

SEC Registration Fee	\$22,805.40
Trustee Fees	*
Printing Expenses	*
Rating Agency Fees	*
Legal Fees and Expenses	*
Accounting Fees and Expenses	*
Miscellaneous	*
Total	*

* These fees are not presently known and cannot be estimated at this time, as they will be based upon, among other things, the amount and type of security being offered as well as the number of offerings.

Item 15. Indemnification of Directors and Officers

Under Section 8.75 of the IBCA, an Illinois corporation may indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he or she is or was a director, officer, employee or agent of the corporation, or who is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

In addition, an Illinois corporation may indemnify any 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 corporation to procure a judgment in its favor by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation, provided that no indemnification shall be made with respect to any claim, issue, or matter as to which such person has been adjudged to have been liable to the corporation, unless, and only to the extent that 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 as the court shall deem proper.

Section 8.75 of the IBCA also provides that, to the extent that a present or former director, officer or employee of a corporation has been successful, on the merits or otherwise, in the defense of any

action, suit or proceeding referred to in either of the foregoing paragraphs, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith, if the person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation.

Our articles of incorporation and bylaws provide that, subject to the limits of applicable federal and state banking laws and regulations, we must indemnify each person who is or was a director or officer of the Company and each person who serves or served at the request of the Company as a director, officer or partner of another enterprise in accordance with, and to the fullest extent authorized by, the IBCA, as the same now exists or may be amended in the future.

We have also obtained officers' and directors' liability insurance which insures against liabilities that officers and directors may, in such capacities, incur. Section 8.75 of the IBCA provides that an Illinois corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or who is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify such person against such liability under the IBCA.

Reference is made to the form of underwriting agreement to be filed as Exhibit 1.1 hereto for provisions providing that the underwriters are obligated under certain circumstances to indemnify our directors, officers and controlling persons against certain liabilities under the Securities Act.

Item 16. Exhibits

The exhibit index attached hereto is incorporated herein by reference.

Item 17. Undertakings

The undersigned registrant hereby undertakes:

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

provided, however, that paragraphs (1)(i), (1)(ii) and (1)(iii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in

reports filed with or furnished to the SEC by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act, that are incorporated by reference in this registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

- (2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (4) That, for the purpose of determining liability under the Securities Act to any purchaser:
 - (i) each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and
 - (ii) each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5) or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii) or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.
- (5) That, for the purpose of determining liability of the registrant under the Securities Act to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to the registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:
 - (i) any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
 - (ii) any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
 - (iii) the portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

- (iv) any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

- (6) That, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

- (7) To file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act in accordance with the rules and regulations prescribed by the SEC under Section 305(b)(2) of the Trust Indenture Act.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the indemnification provisions described in Item 15 above, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

<u>Signature</u>	<u>Title</u>
<hr/> <u>/s/ JERRY L. MCDANIEL</u> Jerry L. McDaniel	Director
<hr/> <u>/s/ JEFFREY M. MCDONNELL</u> Jeffrey M. McDonnell	Director
<hr/> <u>/s/ DWIGHT A. MILLER</u> Dwight A. Miller	Director
<hr/> <u>/s/ RICHARD T. RAMOS</u> Richard T. Ramos	Director
<hr/> <u>/s/ LAURENCE A. SCHIFFER</u> Laurence A. Schiffer	Director
<hr/> <u>/s/ ROBERT F. SCHULTZ</u> Robert F. Schultz	Director
<hr/> <u>/s/ THOMAS D. SHAW</u> Thomas D. Shaw	Director
<hr/> <u>/s/ JEFFREY C. SMITH</u> Jeffrey C. Smith	Director

EXHIBIT INDEX

Exhibit Number	Description of Exhibits
1.1*	Form of Underwriting Agreement.
1.2*	Form of Placement Agent Agreement.
3.1	Articles of Incorporation of Midland States Bancorp, Inc. (incorporated herein by reference to Exhibit 3.1 of the Company's Registration on Form S-1 filed on April 11, 2016 (SEC File No. 333-210683)).
3.2	Statement of Resolution Establishing Series of Series G Preferred Stock of Midland States Bancorp, Inc. (incorporated herein by reference to Exhibit 3.1 of the Company's Current Report on Form 8-K filed on June 9, 2017).
3.3	Form of Statement of Resolution Establishing Series of Fixed Rate Non-Voting Perpetual Non-Cumulative Preferred Stock, Series H of Midland States Bancorp, Inc. (incorporated herein by reference to Exhibit 3.2 of the Company's Current Report on Form 8-K filed on June 9, 2017).
3.4	By-laws of Midland States Bancorp, Inc. (incorporated herein by reference to Exhibit 3.2 of the Company's Registration on Form S-1 filed on April 11, 2016 (SEC File No. 333-210683)).
4.1*	Form of Certificate of Designations of Preferred Stock.
4.2*	Form of Preferred Stock Certificate.
4.3*	Form of Warrant and Warrant Certificate.
4.4	Form of Indenture.
4.5*	Form of Senior Debt Security.
4.6*	Form of Subordinated Debt Security.
4.7*	Form of Unit Agreement and Unit Certificate.
	<i>The other instruments defining the rights of holders of the long-term debt securities of the Company and its subsidiaries are omitted pursuant to Section (b)(4)(iii)(A) of Item 601 of Regulation S-K. The Company hereby agrees to furnish copies of these instruments to the SEC upon request.</i>
5.1	Opinion of Barack Ferrazzano Kirschbaum & Nagelberg LLP.
12.1	Calculation of Ratio of Earnings to Fixed Charges and Ratio of Earnings to Fixed Charges and Preferred Stock Dividends.
23.1	Consent of KPMG LLP.
23.2	Consent of Barack Ferrazzano Kirschbaum & Nagelberg LLP (included in Exhibit 5.1).
24.1	Power of Attorney (included on the signature page to the registration statement).
25.1**	Statement of Eligibility of Trustee on Form T-1 for the Senior Indenture and Subordinated Indenture.

* To be filed by amendment or as an exhibit to a document incorporated by reference herein.

** To be filed separately under the electronic form type "305B2" pursuant to Section 305(b)(2) of the Trust Indenture Act.

MIDLAND STATES BANCORP, INC.,

as Issuer

and

[·],

as Trustee

INDENTURE

Dated as of [·]

CROSS REFERENCE SHEET*

Reconciliation and tie between Trust Indenture Act of 1939, as amended, and Indenture, dated as of [·], between Midland States Bancorp, Inc. and [·], as Trustee:

Section of the Trust Indenture Act	Section of Indenture
310(a)(1), (2) and (5)	6.09
310(a)(3) and (4)	Inapplicable
310(b)	6.08 and 6.10(a), (b) and (d)
311(a)	6.13
311(b)	6.13
312(a)	4.01 and 4.02(a)
312(b)	4.02(a) and (b)
312(c)	4.02(c)
313(a)	4.04(a)
313(b)(1)	Inapplicable
313(b)(2)	4.04(a)
313(c)	4.04(a)
313(d)	4.04(b)
314(a)	4.03
314(b)	Inapplicable
314(c)(1) and (2)	15.05
314(c)(3)	Inapplicable
314(d)	Inapplicable
314(e)	15.05
314(f)	Inapplicable
315(a), (c) and (d)	6.01
315(b)	5.11
315(e)	5.12
316(a)(1)	5.09 and 5.10
316(a)(2)	Not required
316(a) (last sentence)	7.04
316(b)	5.07
316(c)	7.06
317(a)	5.02
317(b)	3.04(a) and (b)
318(a)	15.07

* This Cross Reference Sheet is not part of the Indenture.

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THIS INDENTURE, dated as of [-], is by and between Midland States Bancorp, Inc., an Illinois corporation, and [-], as Trustee.

RECITALS

A. The Company (as defined herein) has duly authorized the execution and delivery of this Indenture (as defined herein) in order to issue from time to time its debentures, notes or other evidences of indebtedness in one or more Series (as defined herein) in accordance with the terms of this Indenture.

B. All things necessary to make this Indenture a valid agreement of the Company according to its terms have been done.

AGREEMENT

In consideration of the recitals and the purchases of the Securities (as defined herein) by the Holders (as defined herein) thereof, the Company and the Trustee (as defined herein) mutually covenant and agree for the benefit of each other and for the equal and proportionate benefit of the respective Holders from time to time of the Securities as follows:

ARTICLE 1
DEFINITIONS

The following terms (except as herein otherwise expressly provided or unless the context otherwise clearly requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Article 1. Certain terms used principally in certain Articles or Sections hereof are defined in those Articles or Sections, as the case may be. All terms used but not defined in this Indenture that are defined in the Trust Indenture Act (as defined herein) or the definitions of which in the Securities Act (as defined herein) are referred to in the Trust Indenture Act, including terms defined therein by reference to the Securities Act (except as herein otherwise expressly provided or unless the context otherwise clearly requires), shall have the meanings assigned to such terms in the Trust Indenture Act and in the Securities Act. Unless the context otherwise clearly requires: (a) all accounting terms used herein and not expressly defined shall have the meanings assigned to such terms in accordance with generally accepted accounting principles, and the term “generally accepted accounting principles” means such accounting principles as are generally accepted in the United States of America (as defined herein) at the time of any computation; (b) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole, as supplemented and amended from time to time, and not to any particular Article, Section or other subdivision; (c) all references to Articles, Sections or other subdivisions are to Articles, Sections or other subdivisions of this Indenture; (d) words in the singular include the plural and vice versa; (e) the pronoun “his” refers to the masculine, feminine and neuter; (f) the word “including” or any variation thereof shall be deemed to be followed by “but not limited to” and (g) the word “principal,” whenever used with reference to the Securities or any Security or any portion thereof, shall be deemed to be followed by “and premium, if any.”

“**Additional Amounts**” has the meaning specified in Section 3.05.

“**Agent**” means any Registrar, Paying Agent, or Depository Custodian.

“**Applicable Procedures**” means, with respect to any matter at any time relating to a Global Security, the rules, policies and procedures of the depository applicable to such matter.

“**Business Day**” means any calendar day that is not a Saturday, Sunday or legal holiday in New York, New York, and on which the Trustee and commercial banks are open for business.

“**Capital Stock**” means any and all shares, interests, participations or other equivalents (however designated and whether or not voting) of corporate stock, including each class of Common Stock and Preferred Stock, and all options, warrants or other rights to purchase or acquire any of the foregoing.

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

“**Common Stock**” includes any stock of any class of the Company that has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company and which is not subject to redemption by the Company.

“**Company**” means Midland States Bancorp, Inc., an Illinois corporation, until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Company” will mean such successor Person.

“**Company Board of Directors**” means either the Board of Directors of the Company or any committee of such Board of Directors duly authorized to act hereunder, as the case may be.

“**Company Board Resolution**” means a copy of one or more resolutions certified by the secretary or any assistant secretary of the Company to have been duly adopted by the Company Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee. Where any provision of this Indenture refers to action to be taken pursuant to a Company Board Resolution (including the establishment of any Series of the Securities and the forms and terms thereof), such action may be taken by any officer of the Company authorized to take such action by the Company Board of Directors as evidenced by a Company Board Resolution.

“**Company Order**” means a written order, direction, instruction or request of the Company signed by both (a) the chief executive officer, the president or any vice president of the Company and (b) the chief financial officer, treasurer or any assistant treasurer or the secretary or any assistant secretary of the Company.

“**Corporate Trust Office**” means the office of the Trustee at which the corporate trust business of the Trustee shall, at any particular time, be administered with respect to this Indenture, which office is, at the date as of which this Indenture is dated, located at [·], and for Agent services such office shall also mean the office or agency of the Trustee located at the date hereof is located at [·].

“**Depository Custodian**” means the Trustee as custodian with respect to the global Securities or any successor entity thereto.

“**Discount Security**” means any Security which provides for an amount less than the stated principal amount thereof to be due and payable upon declaration of acceleration of the maturity thereof pursuant to Section 5.01.

“**Dollar**” means the coin or currency of the United States of America which as of the time of payment is legal tender for the payment of public and private debts.

“**Event of Default**” means any event or condition specified as such in Section 5.01.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

“**Government Obligations**” means securities which are (a) direct obligations of the United States of America or (b) obligations of a Person controlled or supervised by, or acting as an agency or instrumentality of, the United States of America, the full and timely payment of which obligations is unconditionally guaranteed by the United States of America, and which, in either case, are full faith and credit obligations of the United States of America,

and which are not callable or redeemable at the option of the issuer thereof and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such Government Obligation or a specific payment of interest on principal of any such Government Obligation held by such custodian for the account of the holder of a depository receipt; provided that (except as required by law) such custodian is not

authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Obligation or the specific payment of interest on or principal of the Government Obligation evidenced by such depository receipt.

“**Holder**,” “**Holder of Securities**,” “**Securityholder**” or other similar terms mean the Registered Holder of a Security.

“**Indenture**” means this instrument as originally executed and delivered or, if amended or supplemented as herein provided, as so amended or supplemented or both, and shall include the forms and terms of particular Series of Securities established as contemplated hereunder.

“**interest**,” when used with respect to non-interest-bearing Securities, means interest payable at maturity and, when used with respect to a Security which provides for the payment of Additional Amounts pursuant to Section 3.05 or otherwise, includes such Additional Amounts.

“**Officers’ Certificate**” means a certificate signed by both (a) the chief executive officer, the president or any vice president of the Company and (b) the treasurer or any assistant treasurer or the secretary or any assistant secretary of the Company, and delivered to the Trustee. Each such certificate shall include the statements provided for in Section 15.05 to the extent applicable.

“**Opinion of Counsel**” means an opinion in writing signed by legal counsel, which may be an employee of or counsel to the Company, or other counsel reasonably satisfactory to the Trustee. Each such opinion shall include the statements provided for in Section 15.05 to the extent applicable.

“**Original Issue Discount**” with respect to any Security, including any Security that is issued at a price below face value, has the same meaning set forth in Section 1273 of the Internal Revenue Code of 1986 as in effect on the date hereof, or any successor provision, and the applicable Treasury Regulations thereunder.

“**Other Company Obligations**” means obligations of the Company associated with derivative products such as interest rate and currency exchange contracts, foreign exchange contracts, commodity contracts or any similar arrangements, unless the instrument by which the Company incurred, assumed or guaranteed the obligation expressly provides that it is subordinate or junior in right of payment to any other indebtedness or obligations of the Company.

“**Outstanding**,” when used with reference to Securities, shall, subject to the provisions of Section 7.04, mean, as of any particular time, all Securities authenticated and delivered by the Trustee under this Indenture, except:

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

(b) Securities, or portions thereof, as to which moneys in the amount required for the repayment or redemption thereof shall have been deposited in trust with the Trustee or with any Paying Agent (other than the Company) or shall have been set aside, segregated and held in trust by the Company for the Holders of such Securities (if the Company shall act as its own Paying Agent); provided that, if such Securities, or portions thereof, are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as herein provided, or provision satisfactory to the Trustee shall have been made for giving such notice;

(c) Securities for which other Securities shall have been authenticated and delivered in substitution, or which shall have been paid, pursuant to the terms of Section 2.09 (except with respect to any such Security as to which proof satisfactory to the Trustee and the Company is presented that such Security is held by a Person in whose hands such Security is a legal, valid and binding obligation of the Company); and

(d) Securities discharged pursuant to Section 10.01 or with respect to which the Company has effected defeasance and/or covenant defeasance as provided in Section 10.02, to the extent such Securities are not reinstated pursuant to Section 10.06.

“**Paying Agent**” means any Person (which may include the Company) authorized by the Company to pay the principal of or interest, if any, on any Security on behalf of the Company.

“**Person**” means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof, or any other legal entity.

“**Place of Payment**,” when used with respect to the Securities of any Series, means the place or places where the principal of and interest, if any, on the Securities of that Series are payable as specified pursuant to Section 3.02, and initially shall mean the Corporate Trust Office with respect to Agent services.

“**Preferred Stock**” includes any stock of any class of the Company that has a preference over Common Stock in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company.

“**Registered Holder**,” when used with respect to a Security, means the Person in whose name such Security is registered in the Security register.

“**Responsible Officer**,” when used with respect to the Trustee, means any officer within the corporate trust department (or any successor group) of the Trustee, including any vice president, assistant vice president or assistant secretary, or any other officer or assistant officer of the Trustee at the Corporate Trust Office customarily performing functions similar to those performed by the Persons who at the time shall have direct responsibility for the administration of this Indenture, or any other officer to whom any corporate trust matter is referred because of such Person’s knowledge of and familiarity with the particular subject.

“**Securities**” means debentures, notes or other evidences of indebtedness that have been authenticated and delivered under this Indenture.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Senior Indebtedness**” means with respect to any Series of Subordinated Securities issued hereunder: (i) the principal of, and premium, if any, and interest on “indebtedness for money borrowed” of the Company whether outstanding on the date hereof or hereafter created, assumed or incurred, except for indebtedness that expressly states that it is subordinate in right of payment to indebtedness for money borrowed of the Company, and (ii) any deferrals, renewals or extensions of any such indebtedness. The term “indebtedness for money borrowed” means any obligation of, or any obligation guaranteed by, the Company for the repayment of money borrowed, whether or not evidenced by bonds, debentures, notes or other written instruments, any off-balance sheet guarantee obligation, any obligation under a direct credit substitute, including any letters of credit, bankers’ acceptance, security purchases facility or similar agreement, any capitalized lease obligation; any deferred obligation for payment of the purchase price of any property or assets; all obligations of the type referred to above of other persons for the payment of which the Company is responsible or liable as obligor, guarantor or otherwise; and all obligations of the type referred to above of other persons secured by any lien on any property or asset of the Company, whether or not such obligation is assumed by the Company. With respect to any Series of Subordinated Securities issued hereunder, Senior Indebtedness excludes any indebtedness that: (a) expressly states that it is junior to, or ranks equally in right of payment with, the Subordinated Securities of such Series, (b) is identified as junior to, or equal in right of payment with, the Subordinated Securities of such Series in any Company Board Resolution or any supplemental indenture hereto, (c) constitutes trade creditor indebtedness arising in the ordinary course of business or (d) constitutes indebtedness between or among the Company and its affiliates.

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“**Senior Securities**” means any Securities issued pursuant to this Indenture the terms of which provide that such Securities rank senior in right of payment to any Subordinated Securities issued pursuant to this Indenture.

“**Series**” or “**Series of Securities**” means a series of Securities and, except in Sections 2.03 and 7.04 and Articles 1, 5 and 6, a Tranche in the event that the applicable Series may be issued in separate Tranches.

“**Subordinated Securities**” means any Securities issued pursuant to this Indenture the terms of which provide that such Securities rank junior in right of payment to Senior Indebtedness.

“**Subsidiary**” means any Person which is consolidated in the Company’s accounts and any Person of which at least a majority of the outstanding stock having by the terms thereof ordinary voting power to elect a majority of the directors (or Persons performing similar functions) of such Person (irrespective of whether or not at the time stock of any other class or classes of such Person shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by the Company, or by one or more Subsidiaries, or by the Company and one or more Subsidiaries.

“**Tranche**” means all Securities of the same Series which have the same issue date, maturity date, interest rate or method of determining interest, and, in the case of Discount Securities, which have the same issue price.

“**Treasury Regulation**” means a final or temporary regulation issued by the U.S. Department of the Treasury.

“**Trust Indenture Act of 1939**” or “**Trust Indenture Act**,” except as otherwise provided in Sections 8.01 and 8.02, means the Trust Indenture Act of 1939, as amended.

“**Trustee**” means the Person identified as “Trustee” in the first paragraph hereof until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder, and if at any time there is more than one such Person, “Trustee” as used with respect to the Securities of any Series shall mean only the Trustee with respect to Securities of that Series.

“**United States**” means the United States of America (together with the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction.

“**United States of America**” means the fifty states constituting the United States of America as of the date hereof.

“**United States Person**” means, unless otherwise specified with respect to any Securities pursuant to Section 2.03, an individual who is a citizen or resident of the United States, a corporation, partnership, limited liability company or other entity created or organized in or under the laws of the United States or an estate or trust the income of which is subject to United States federal income taxation regardless of its source.

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

“**Wholly Owned Subsidiary**” means any Subsidiary in which the Company and/or its other wholly owned Subsidiaries own all of the outstanding capital stock (other than directors’ qualifying shares).

ARTICLE 2 **SECURITIES**

Section 2.01. Forms Generally. The Securities of each Series shall be substantially in such form (not inconsistent with this Indenture) as shall be established by or pursuant to a Company Board Resolution and set forth in an Officers’ Certificate and/or in one or more indentures supplemental hereto, in each case with such appropriate

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insertions, omissions, substitutions and other variations as are required or permitted by this Indenture or any indenture supplemental hereto (the provisions of which shall be appropriate to reflect the terms of each Series of Securities, including the denomination) and may have imprinted or otherwise reproduced thereon such legend or legends, not inconsistent with the provisions of this Indenture or any indenture supplemental hereto, as may be required to comply with any law or with any rules or regulations pursuant thereto, or with any rules of any securities exchange or market or to conform to general usage, all as may be determined by the officers executing such Securities as evidenced by their execution of the Securities.

The definitive Securities shall be printed, or may be produced in any other manner, all as determined by the officers of the Company executing such Securities as evidenced by their execution of such Securities.

Section 2.02. *Form of Trustee's Certificate of Authentication.* The Trustee's certificate of authentication on all Securities shall be in substantially the following form:

[FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION]

This is one of the Securities of the Series designated herein and referred to in the within-mentioned Indenture.

[-], as Trustee

By: _____
Authorized Signatory

OR

as Authentication Agent

By: _____
Authorized Signatory

Section 2.03. *Amount Unlimited; Issuable in Series.* The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited.

The Securities may be issued in one or more Series. There shall be established in or pursuant to one or more Company Board Resolutions and set forth in an Officers' Certificate and/or established in one or more indentures supplemental hereto, prior to the issuance of Securities of any Series:

(a) the title of the Securities of the Series (which title shall distinguish the Securities of the Series from all other Securities issued by the Company), including, as applicable, whether the Securities of the Series shall be issued as Senior Securities or Subordinated Securities; any subordination provisions particular to the Securities of the Series; and whether the Securities of the Series are convertible or exchangeable for other securities;

(b) any limit upon the aggregate principal amount of the Securities of the Series that may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the Series pursuant to Section 2.08, 2.09, 2.11 or 11.02);

(c) if other than 100% of its aggregate principal amount, the percentage of the aggregate principal amount at which the Securities of the Series will be offered;

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(d) the date or dates (whether fixed or extendable) on which the principal of the Securities of the Series is payable;

(e) the rate or rates, which may be fixed or variable, at which the Securities of the Series shall bear interest, if any, the date or dates from which such interest shall accrue, the interest payment dates on which such interest shall be payable, the basis upon which interest shall be calculated if other than that of a 360-day year consisting of twelve 30-day months and the record dates for the determination of Holders to whom interest is payable;

(f) any provisions relating to the issuance of the Securities of the Series at an Original Issue Discount;

(g) the place or places where the principal of and interest on Securities of the Series shall be payable and where Securities of the Series may be surrendered for conversion or exchange (if other than as provided in Section 3.02);

(h) whether any of such Securities of the Series are to be redeemable at the option of the Company, and if so, the price or prices at which, the period or periods within which and the terms and conditions upon which Securities of the Series may be so redeemed, in whole or in part, at the option of the Company, pursuant to any sinking fund or otherwise;

(i) if other than 100% of the aggregate principal amount thereof, the portion of the principal amount of the Securities of the Series which shall be payable upon declaration of acceleration of the maturity date thereof pursuant to Section 5.01 or provable in bankruptcy pursuant to Section 5.02, or, if applicable, which is convertible or exchangeable;

(j) the obligation, if any, of the Company to redeem, purchase or repay Securities of the Series pursuant to any sinking fund or analogous provisions or at the option of a Holder thereof, and the price or prices at which, and the period or periods within which, and the terms and conditions upon which, Securities of the Series shall be redeemed, purchased or repaid, in whole or in part, pursuant to such obligation (including the terms or method of payment thereof if other than cash), and any provision for the remarketing of the Securities;

(k) if other than denominations of \$1,000 and any integral multiple thereof, the denominations, in which Securities of the Series shall be issuable;

(l) whether the Securities of the Series will be certificated and, if so, the form of the Securities, including such legends as required by law or as the Company deems necessary or appropriate, and the forms of any other certificates which may be required hereunder or which the Company may require in connection with the offering, sale, delivery or exchange of the Securities;

(m) whether Securities of the Series are issuable in Tranches;

(n) the obligations, if any, of the Company to permit the conversion or exchange of the Securities of such Series into Common Stock, Preferred Stock or other Capital Stock or property (including securities), or a combination thereof, and the terms and conditions upon which such conversion shall be effected (including the initial conversion or exchange price or rate, the conversion or exchange period, the provisions for conversion or exchange price or rate adjustments and any other provisions relative to such obligation) and any limitations on the ownership or transferability of the securities or property into which the Securities may be converted or exchanged;

(o) if other than the Trustee, any trustees, authenticating or paying agents, transfer agents or registrars or any other Agents with respect to the Securities of such Series;

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(p) if the Securities of the Series do not bear interest, the applicable dates for purposes of Section 4.01;

(q) any deletions from, modifications of or additions to (a) the Events of Default with respect to Securities of the Series or (b) the right of the Trustee or the Holders of such Securities pursuant to Section 5.01;

(r) any deletions from, modifications of or additions to the covenants set forth in Article 3 with respect to Securities of the Series;

(s) if the amount of payments of principal of, and make-whole amount, if any, and interest on, the Securities of the Series may be determined with reference to an index, the manner in which such amount shall be determined, or computed if other than on a basis of a 360 day year consisting of twelve 30 day months;

(t) whether the Securities of the Series shall be issued in whole or in part in the global form of one or more Securities and in such case, (i) the depository for such Securities, which depository must be a clearing agency registered under the Exchange Act, (ii) the circumstances under which any such Securities may be exchanged for Securities registered in the name of, and under which any transfer of such Securities may be registered in the name of, any Person other than such depository or its nominee, if other than as set forth in Section 2.14, and (iii) any other provisions regarding such Securities which provisions may be in addition to or in lieu of, in whole or in part, the provisions of Section 2.14;

(u) whether, and under what circumstances, the Company will pay Additional Amounts as contemplated by Section 3.05 on the Securities of the Series to any Holder who is not a United States Person (including any modification to the definition of such term) in respect of any tax, assessment or governmental charge and, if so, whether the Company will have the option to redeem such Securities rather than pay such Additional Amounts (and the terms of any such option);

(v) whether the Securities of the Series, in whole or in specified part, will not be defeasible pursuant to Section 10.02(b) or Section 10.02(c), or both such Sections, and, if the Securities may be defeased, in whole or in specified part, pursuant to either or both such Sections, any provisions to permit a pledge of obligations other than Government Obligations (or the establishment of other arrangements) to satisfy the requirements of Section 10.02(d)(i) for defeasance of the Securities and, if other than by a Company Board Resolution, the manner in which any election by the Company to defease the Securities will be evidenced;

(w) whether the Securities of such Series are to be secured by any property, assets or other collateral and, if so, the applicable collateral, any deletions from, modifications of or additions to the provisions of Article 13;

(x) the Person to whom any interest on the Securities of such Series will be payable, if other than the Securityholder thereof, on the regular record date therefor;

(y) solely with respect to any series of Subordinated Securities, if other than as set forth herein, provisions for the subordination of the Subordinated Securities of such series and, if applicable, any change in the definition of Senior Indebtedness with respect to such series;

(z) any restrictions, conditions or requirements for transfer of the Securities of such Series; and

(aa) any other terms or conditions upon which the Securities of the Series are to be issued.

All Securities of any one Series shall be substantially identical except as to denomination, except as contemplated by the immediately succeeding paragraph, and except as may otherwise be provided in or pursuant to such Company Board Resolution or in any such indenture supplemental hereto. All Securities of any one Series need not be issued at the same time, and unless otherwise provided, a Series may be reopened, without the consent of the

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Holders, for issuances of additional Securities of such Series or to establish additional terms of such Series of Securities (which additional terms shall only be applicable to unissued or additional Securities of such Series). No Company Board Resolutions or Officers' Certificate may affect the Trustee's own rights, duties or immunities under this Indenture or otherwise without its written consent.

Each Series may be issued in one or more Tranches. All Securities of a Tranche shall have the same issue date, maturity date, interest rate or method of determining interest, and, in the case of Discount Securities, the same issue price.

Section 2.04. Authentication and Delivery of Securities. At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any Series, executed by the Company to the Trustee for authentication, and the Trustee shall thereupon authenticate and deliver such Securities to or upon a Company Order without any further action by the Company. In authenticating such Securities and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive and (subject to Section 6.01) shall be fully protected in relying upon:

- (a) a Company Board Resolution relating to such Series;
- (b) an executed supplemental indenture, if any;
- (c) an Officers' Certificate setting forth the form and terms of the Securities of such Series as required pursuant to Sections 2.01 and 2.03, respectively, and prepared in accordance with Section 15.05;
- (d) at the option of the Company, either an Opinion of Counsel, prepared in accordance with Section 15.05, or a letter addressed to the Trustee allowing the Trustee to rely on an Opinion of Counsel, substantially to the effect that:

- (i) the form or forms and terms of such Securities, if any, have been established in or pursuant to a Company Board Resolution or in a supplemental indenture as permitted by Sections 2.01 and 2.03, respectively, in conformity with the provisions of this Indenture; and

- (ii) this Indenture, any supplemental indenture, and such Securities have been duly authorized, and, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and binding obligations of the Company enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization or other laws relating to or affecting the enforcement of creditors' rights and by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law;

provided, however, that in the case of any Series issuable in Tranches, if the Trustee has previously received the applicable documents referred to in clause (a) through (d) above with respect to such Series, the Trustee shall authenticate and deliver Securities of such Tranches executed by the Company for original issuance upon receipt by the Trustee of a notice, executed by an officer of the Company transmitted electronically by facsimile or otherwise and confirmed in writing to the Trustee, of the terms of the issuance of such Securities.

The Trustee shall have the right to decline to authenticate and deliver any Securities under this Section 2.04 if the Trustee, being advised by counsel, determines that such Securities may not lawfully be issued by the Company.

Notwithstanding the foregoing, if any Security shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Security to the Trustee for cancellation as provided in Section 2.10, together with a written statement (which need not comply with Section 15.05 and need not be accompanied by an Opinion of Counsel) stating that such Security has never been issued and sold by the

Company, for all purposes of this Indenture such Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

Section 2.05. Execution of Securities. The Securities shall be signed on behalf of the Company by the chief executive officer, president or any vice president of the Company and need not be attested or sealed. Such signature may be the manual or facsimile signatures of the present or any future such officers. Typographical and other minor errors or defects in any such reproduction of any such signature shall not affect the validity or enforceability of any Security that has been duly authenticated and delivered by the Trustee.

Securities bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall, to the fullest extent permitted by law, bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of such Securities.

Section 2.06. Certificate of Authentication. Only such Securities as shall bear thereon a certificate of authentication substantially in the form hereinbefore recited, executed by the Trustee by the manual signature of one of its authorized signatories, shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee upon any Security executed by the Company shall be conclusive evidence that the Security so authenticated has been duly authenticated and delivered hereunder and that the Holder is entitled to the benefits of this Indenture.

Section 2.07. Denomination and Date of Securities; Payments of Interest. The Securities shall be issuable in denominations as shall be specified as contemplated by Section 2.03. In the absence of any such specification with respect to the Securities of any Series, the Securities of such Series shall be issuable in denominations of \$1,000 and any multiple thereof, and interest shall be computed on the basis of a 360-day year of twelve 30-day months. The Securities shall be numbered, lettered, or otherwise distinguished in such manner or in accordance with such plan as the officers of the Company executing the same may determine with the approval of the Trustee as evidenced by the execution and authentication thereof.

Each Security shall be dated the date of its authentication, shall bear interest from the date, and shall be payable on the dates, in each case, which shall be specified as contemplated by Section 2.03.

Interest on any Security which is payable, and is punctually paid or duly provided for, on any interest payment date shall be paid to the Person in whose name that Security (or one or more predecessor Securities) is registered at the close of business on the regular record date for the payment of such interest.

The term "**record date**," as used with respect to any interest payment date (except for a date for payment of defaulted interest), means the date specified as such in the terms of the Securities of any particular Series, or, if no such date is so specified, if such interest payment date is the first day of a

calendar month, the close of business on the fifteenth day of the next preceding calendar month or, if such interest payment date is the fifteenth day of a calendar month, the close of business on the first day of such calendar month, whether or not such record date is a Business Day.

Any interest on any Security of any Series which is payable, but is not punctually paid or duly provided for, on any interest payment date (called “**defaulted interest**” for the purpose of this Section 2.07) shall forthwith cease to be payable to the Registered Holder on the relevant record date by virtue of his having been such Holder; and such defaulted interest may be paid by the Company, at its election in each case, as provided in clause (a) or (b) below:

(a) The Company may elect to make payment of any defaulted interest to the Persons in whose names any such Securities (or their respective predecessor Securities) are registered at the close of business on a special record date for the payment of such defaulted interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of defaulted interest proposed to be paid on each Security of such Series and the date of the proposed payment, and at the same time the Company shall deposit with

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the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such defaulted interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment; such money, when so deposited, will be held in trust for the benefit of the Persons entitled to such defaulted interest. Thereupon the Company shall fix a special record date for the payment of such defaulted interest in respect of Securities of such Series which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Company shall promptly notify the Trustee of such special record date and, in the name and at the expense of the Company, the Trustee shall cause notice of the proposed payment of such defaulted interest and the special record date thereof to be mailed, first class postage prepaid, to each Registered Holder at his address as it appears in the Security register, not less than 10 days prior to such special record date. Notice of the proposed payment of such defaulted interest and the special record date therefor having been mailed as aforesaid, such defaulted interest in respect of Securities of such Series shall be paid to the Person in whose names such Securities (or their respective predecessor Securities) are registered on such special record date and such defaulted interest shall no longer be payable pursuant to the following clause (b).

(b) The Company may make payment of any defaulted interest on the Securities of any Series in any other lawful manner not inconsistent with the requirements of any securities exchange or market on which the Securities of that Series may be listed, and upon such notice as may be required by such exchange or market, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such payment shall be deemed practicable by the Trustee.

Any defaulted interest payable in respect of any Security of any Series which is not a Security shall be payable pursuant to such procedures as may be satisfactory to the Trustee in such manner that there is no discrimination as between the Holders of Securities and other Securities of the same Series, and notice of the payment date therefor shall be given by the Trustee, in the name and at the expense of the Company, by first class mail, postage prepaid, or as to Global Securities, pursuant to Applicable Procedures.

Subject to the foregoing provisions of this Section 2.07, each Security delivered under this Indenture upon transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue interest, that were carried by such other Security.

In the case of any Security which is converted into Common Stock or Preferred Stock after any regular record date and on or prior to the next succeeding interest payment date (other than any Security whose maturity is prior to such interest payment date), interest whose stated maturity is on such interest payment date shall be payable on such interest payment date notwithstanding such conversion, and such interest (whether or not punctually paid or duly provided for) shall be paid to the Person in whose name that Security (or one or more predecessor Securities) is registered at the close of business on such regular record date. Except as otherwise expressly provided in the immediately preceding sentence, in the case of any Security which is converted, interest whose stated maturity is after the date of conversion of such Security shall not be payable.

Section 2.08. Registration, Transfer and Exchange. The Company will keep or will cause to be kept at the office or agency of the Trustee to be maintained for the purpose as provided in Section 3.02 a register or registers in which, subject to such reasonable regulations as it may prescribe, the Company will provide for the registration and transfer of Securities as is provided in this Article 2. Such register shall be in written form in the English language or in any other form capable of being converted into such form within a reasonable time. At all reasonable times such register or registers shall be open for inspection by the Trustee.

Upon due presentation for registration of transfer of any Security of any Series at any such office or agency to be maintained for the purpose as provided in Section 3.02, the Company shall execute, and the Trustee shall authenticate and deliver in the name of the transferee or transferees, a new Security or Securities of the same Series in authorized denominations for a like aggregate principal amount.

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

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

No service charge shall be made for any registration of transfer or exchange of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer or exchange of Securities, other than exchanges pursuant to Section 2.11, 8.05 or 11.02 not involving any transfer.

The Company shall not be required (a) to issue, register the transfer of or exchange any Security during a period beginning at the opening of business 15 days before the day of mailing of a notice of redemption of Securities for redemption under Article 11 or (b) to register the transfer of or exchange any Security so selected for redemption in whole or in part, except, in the case of any Security to be redeemed in part, the portion thereof not redeemed.

Section 2.09. *Mutilated, Defaced, Destroyed, Lost and Stolen Securities.* In case any temporary or definitive Security shall become mutilated or defaced or be destroyed, lost or stolen, the Company at its own discretion may execute, and upon receipt of a Company Order, the Trustee shall authenticate and deliver, a new Security of the same Series, bearing a number not contemporaneously outstanding, in exchange and substitution for the mutilated or defaced Security, or in lieu of and substitution for the Security so destroyed, lost or stolen. In every case, the applicant for a substitute Security shall furnish to the Company, to the Trustee and to any agent of the Company or the Trustee such security or indemnity as may be required by them to indemnify and defend and to save each of them harmless and, in every case of destruction, loss or theft, evidence to their satisfaction of the destruction, loss or theft of such Security and of the ownership thereof.

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

In case any Security which has matured or is about to mature or has been called for redemption in full shall become mutilated or defaced or be destroyed, lost or stolen, the Company may, instead of issuing a substitute Security, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated or defaced Security).

Every substitute Security of any Series issued pursuant to the provisions of this Section 2.09 by virtue of the fact that any such Security is destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone and shall be entitled to all the benefits of (but shall be subject to all the limitations of rights set forth in) this Indenture equally and proportionately with any and all other Securities of such Series duly authenticated and delivered hereunder. All Securities shall be held and owned upon the express condition that, to the extent permitted by the law, the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, defaced, destroyed, lost or stolen Securities and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or other securities without their surrender.

Section 2.10. *Cancellation of Securities.* All Securities surrendered for payment, redemption, registration of transfer, conversion or exchange, or for credit against any payment in respect of a sinking or analogous fund, shall, if surrendered to the Company or any agent of the Company or the Trustee, be delivered to the Trustee for cancellation or, if surrendered to the Trustee, shall be cancelled promptly by it; and no Securities shall be issued in lieu thereof, except as expressly permitted by any of the provisions of this Indenture. The Trustee shall dispose of

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cancelled Securities in accordance with its customary procedures. If the Company shall acquire any of the Securities such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Securities unless and until the same are delivered to the Trustee for cancellation.

Section 2.11. *Temporary Securities.* Pending the preparation of definitive Securities for any Series, the Company may execute and the Trustee shall authenticate and deliver temporary Securities for such Series (printed, lithographed, typewritten or otherwise reproduced, in each case in form satisfactory to the Trustee). Temporary Securities of any Series may be of any authorized denomination, and substantially in the form of the definitive Securities of such Series but with such omissions, insertions and variations as may be appropriate for temporary Securities, all as may be determined by the Company with the concurrence of the Trustee. Temporary Securities may contain such reference to any provisions of this Indenture as may be appropriate. Every temporary Security shall be executed by the Company and be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with like effect, as the definitive Securities. Without unreasonable delay the Company shall execute and shall furnish definitive Securities of such Series and thereupon temporary Securities of such Series may be surrendered in exchange therefor without charge at each office or agency to be maintained by the Company for that purpose pursuant to Section 3.02, and the Trustee shall authenticate and deliver in exchange for such temporary Securities of such Series a like aggregate principal amount of definitive Securities of the same Series of authorized denominations. Until so exchanged, the temporary Securities of any Series shall be entitled to the same benefits under this Indenture as definitive Securities of such Series.

Section 2.12. *Calculations.* The Company shall be responsible for making calculations called for under the Securities and this Indenture, including but not limited to determination of interest, additional interest, redemption price, premium, make whole amount, and any additional amounts or other amounts payable on the Securities. The Company will make the calculations in good faith and, absent manifest error, its calculations will be final and binding on the Holders. The Company will provide a schedule of its calculations to the Trustee when requested by the Trustee, and the Trustee is entitled to rely conclusively on the accuracy of the Company's calculations without independent verification. The Trustee shall forward the Company's calculations to any Holder of the Securities upon the written request of such Holder.

Section 2.13. *CUSIP Numbers.* The Company in issuing the Securities may use "CUSIP" or "ISIN" numbers (if then generally in use), and, if so, the Trustee shall indicate the "CUSIP" or "ISIN" numbers of the Securities in notices as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice and that reliance may be placed only on the other identification numbers printed on the Securities, and any such notice shall not be affected by any defect in or omission of such numbers. The Company shall promptly notify the Trustee of any change in the "CUSIP" or "ISIN" numbers.

Section 2.14. *Securities in Global Form.* Unless otherwise provided in or pursuant to this Indenture or any Securities, the Securities shall be issuable in temporary or permanent global form. If Securities of or within a Series are issuable in whole or in part in global form, any such Security may provide that it shall represent the aggregate amount of Outstanding Securities of such Series (or such lesser amount as is permitted by the terms thereof) from time to time endorsed thereon and may also provide that the aggregate amount of Outstanding Securities represented thereby may from time to time be reduced or increased to reflect exchanges. Any endorsement of a Security in global form to reflect the amount, or any increase or decrease in the amount, or changes in the rights of Holders, of Outstanding Securities represented thereby, shall be made in such manner and by such Person or Persons as shall be specified therein or in the Company Order to be delivered to the Trustee pursuant to Section 2.04. Subject to the provisions of Section 2.04 and, if applicable, Section 2.11, the Trustee shall deliver and redeliver any Security in permanent global form in the manner and upon instructions given by the Person or Persons specified therein or in the applicable Company Order, if any. Any instructions by the Company with respect to endorsement or delivery or redelivery of a Security in global form shall be in writing but need not comply with Section 15.05 and need not be accompanied by an Opinion of Counsel.

The provisions of the last paragraph of Section 2.04 shall apply to any Security in global form if such Security was never issued and sold by the Company and the Company delivers to the Trustee the Security in global

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form together with written instructions (which need not comply with Section 15.05 and need not be accompanied by an Opinion of Counsel) with regard to the reduction in the principal amount of Securities represented thereby, together with the written statement contemplated by the last paragraph of Section 2.04.

Notwithstanding the provisions of Section 3.01, unless otherwise specified as contemplated by Section 2.04, payment of principal of and interest on any Security in permanent global form shall be made to the Person or Persons specified in such Security.

Neither the Company nor the Trustee shall have any responsibility or obligation to any Person claiming a beneficial ownership interest in the Securities under or through any clearing agency or any other Person which is not shown on the Security register as being a Registered Holder with respect to either the Securities, the accuracy of any records maintained by any such clearing agency, the payment by any such clearing agency or its participants of any amount in respect of the principal of or interest on the Securities, any notice which is permitted or required to be given under the Indenture, any consent given or other action taken by such clearing agency as Registered Holder, or any selection by such clearing agency of any Person to receive payment of principal, interest or other amounts payable on the Securities. The Trustee and each Agent are hereby authorized to act in accordance with Applicable Procedures.

Section 2.15. *Form of Conversion Notice.* The form of any conversion notice for the conversion of Securities into shares of Common Stock, Preferred Stock or other securities of the Company shall be in substantially the form included with the applicable form of Securities as shall be established pursuant to Section 2.01.

ARTICLE 3 **COVENANTS OF THE ISSUER**

Section 3.01. *Payment of Principal and Interest.* The Company covenants and agrees for the benefit of each Series of Securities that it will duly and punctually pay or cause to be paid the principal of, and interest on, each of the Securities of such Series in accordance with the terms of the Securities of such Series and this Indenture. Principal, premium, if any, and interest shall be considered paid on the date due if the Paying Agent, if other than the Company or one of its Subsidiaries, holds as of 11:00 a.m. Eastern Time on the due date money deposited by the Company in immediately available funds and designated for and sufficient to pay all principal, premium, if any, and interest then due.

Section 3.02. *Offices for Payment, etc.* So long as any of the Securities remain Outstanding, the Company will maintain for each Series an office or agency (a) where the Securities may be presented for payment, (b) where the Securities may be presented for registration of transfer and for exchange as in this Indenture provided, and (c) where notices and demands to or upon the Company in respect of the Securities or of this Indenture may be served. The Company will give to the Trustee written notice of the location of any such office or agency and of any change of location thereof. In case the Company shall fail to so designate or maintain any such office or agency or shall fail to give such notice of the location or of any change in the location thereof, presentations and demands may be made at the Place of Payment and notices may be served at the Corporate Trust Office. Unless otherwise specified pursuant to Section 2.03, the Trustee is appointed Paying Agent and Registrar.

Section 3.03. *Appointment to Fill a Vacancy in Office of Trustee.* The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 6.10, a Trustee, so that there shall at all times be a Trustee with respect to each Series of Securities hereunder.

Section 3.04. *Paying Agents.* Whenever the Company shall appoint a Paying Agent other than the Trustee with respect to the Securities of any Series, it will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section 3.04:

(a) that it will hold all sums received by it as such Paying Agent for the payment of the principal of or interest on the Securities of such Series (whether such sums have been paid to it by the Company or other obligor on the Securities of such Series) in trust for the benefit of the Holders of the Securities of such Series

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or of the Trustee and, upon the occurrence of an Event of Default and upon the written request of the Trustee, pay over all such sums received by it to the Trustee;

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

(c) that it will give the Trustee notice of any change of address of any Holder of which it is aware.

The Company will, on or prior to each due date of the principal of or interest on the Securities of such Series, deposit with the Paying Agent a sum sufficient to pay such principal or interest so becoming due, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of any failure to take such action.

If the Company shall act as its own Paying Agent with respect to the Securities of any Series, it will, on or before each due date of the principal of or interest on the Securities of such Series, set aside, segregate and hold in trust for the benefit of the Holders of the Securities of such Series a sum sufficient to pay such principal or interest so becoming due. The Company will promptly notify the Trustee of any failure to take such action.

Anything in this Section 3.04 to the contrary notwithstanding, the Company may at any time, for the purpose of obtaining a satisfaction and discharge with respect to one or more or all Series of Securities hereunder, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust for any such Series by the Company or any Paying Agent hereunder, as required by this Section 3.04, such sums to be held by the Trustee upon the trusts herein contained.

Anything in this Section 3.04 to the contrary notwithstanding, the agreement to hold sums in trust as provided in this Section 3.04 is subject to the provisions of Sections 10.04 and 10.05.

Section 3.05. Additional Amounts. If Securities of a Series provide for the payment of additional amounts to any Holder who is not a United States Person in respect of any tax, assessment or governmental charge (“**Additional Amounts**”), the Company will pay to the Holder of any Security of such Series such Additional Amounts as may be so provided by Section 2.03. Whenever in this Indenture there is mentioned, in any context, the payment of the principal of or interest on, or in respect of, any Security of a Series or the net proceeds received on the sale or exchange of a Security of a Series, such mention shall be deemed to include mention of the payment of Additional Amounts provided for by the terms of such Series established pursuant to Section 2.03 to the extent that, in such context, Additional Amounts are, were or would be payable in respect thereof pursuant to such terms, and express mention of the payment of Additional Amounts (if applicable) in any provisions shall not be construed as excluding Additional Amounts in those provisions where such express mention is not made.

Except as otherwise specified pursuant to Section 2.03, if the Securities of a Series provide for the payment of Additional Amounts, at least 10 days prior to each date of payment of principal or interest on which any Additional Amount shall be payable, the Company will furnish the Trustee and the Company’s principal Paying Agent or Paying Agents, if other than the Trustee, with an Officers’ Certificate instructing the Trustee and such Paying Agent or Paying Agents whether such payment of principal of or interest on the Securities of that Series shall be made to Holders of Securities of that Series who are not United States Persons without withholding for or on account of any tax, assessment or other governmental charge described in the Securities of that Series. If any such withholding shall be required, then such Officers’ Certificate shall specify by country the amount, if any, required to be withheld on such payments to such Holders of Securities of that Series and the Company will pay to the Trustee or such Paying Agent the Additional Amounts required by the terms of such Securities. The Company covenants to indemnify the Trustee and any Paying Agent for, and to hold them harmless against, any loss, liability or expense reasonably incurred without negligence or willful misconduct on their part arising out of or in connection with actions taken or omitted by any of them in reliance on any Officers’ Certificate furnished pursuant to this Section 3.05 or in the event the Trustee shall not withhold or deduct any sums as a result of not receiving an Officers’ Certificate pursuant to this Section 3.05. The Trustee may provide a copy of such Officers’ Certificate or other

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notice received from the Company relating to Additional Amounts to any Holder upon written request. Unless and until a Responsible Officer of the Trustee receives at the Corporate Trust Office such a certificate, the Trustee may assume without inquiry that no such Additional Amounts are payable. The Trustee shall not at any time be under any duty or responsibility to any Holder to determine whether any Additional Amounts are payable, or with respect to the nature, extent, or calculation of the amount of any Additional Amounts owed, or with respect to the method employed in such calculation of any Additional Amounts. If the Company has paid Additional Amounts directly to the Persons entitled to it, the Company shall deliver to the Trustee an Officers’ Certificate setting forth the particulars of such payment.

Section 3.06. Calculation of Original Issue Discount. If any Security bears Original Issue Discount, the Company shall promptly, at the end of each calendar year, calculate the Original Issue Discount accrued on Outstanding Securities as of the end of such year and shall determine whether the amount of Original Issue Discount qualifies for the *de minimis* exception rule as set forth in Section 1273(a)(3) of the Internal Revenue Code of 1986, as amended from time to time, and the Treasury Regulations promulgated thereunder. If such calculated amount does not qualify for the *de minimis* exception rule, then the Company shall subsequently file with the Trustee no later than January 15th of each calendar year (a) a written notice specifying the amount of Original Issue Discount (including daily rates and accrual periods) accrued on Outstanding Securities as of the end of such year and (b) such other specific information relating to such Original Issue Discount as may then be relevant under the Internal Revenue Code of 1986, as amended from time to time, and the Treasury Regulations promulgated thereunder.

ARTICLE 4

SECURITYHOLDERS’ LISTS AND REPORTS BY THE ISSUER AND THE TRUSTEE

Section 4.01. Company to Furnish Trustee Information as to Names and Addresses of Securityholders. The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee for the Securities of each Series a list in such form as the Trustee may reasonably require of the names and addresses of the Holders of the Securities of each Series:

(a) semiannually and not more than 15 days after each record date for the payment of interest on such Securities, as hereinabove specified, as of such record date, and on dates to be determined pursuant to Section 2.03 for non-interest-bearing securities in each year; and

(b) at such other times as the Trustee may request in writing, within 30 days after receipt by the Company of any such request, and such list shall be as of a date not more than 15 days prior to the time such information is furnished;

provided that, if and so long as the Trustee shall be the Security registrar for such Series, such list shall not be required to be furnished.

Section 4.02. Preservation and Disclosure of Securityholders’ Lists.

(a) The Trustee for the Securities of each Series shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the Holders of each Series of Securities contained in the most recent list furnished to it as provided in Section 4.01 or maintained by the Trustee in its capacity as Security registrar for such Series, if so acting. The Trustee may destroy any list furnished to it as provided in Section 4.01 upon receipt of a new list so furnished.

(b) In case three or more Holders of Securities of any Series (hereinafter referred to as “**applicants**”) apply in writing to the Trustee and furnish to the Trustee reasonable proof that each such applicant has owned a Security for a period of at least six months preceding the date of such application, and such application states that the applicants desire to communicate with other Holders of Securities of a particular Series (in which case the applicants must all hold Securities of such Series) or with Holders of all Securities with respect to their rights under this Indenture or under such Securities and such application is accompanied by a copy of the form of proxy or

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other communication which such applicants propose to transmit, then the Trustee shall, within five Business Days after the receipt of such application, at its election, either:

(i) afford to such applicants access to the information preserved at the time by the Trustee in accordance with the provisions of subsection (a) of this Section 4.02, or

(ii) inform such applicants as to the approximate number of Holders of Securities of such Series or all Securities, as the case may be, whose names and addresses appear in the information preserved at the time by the Trustee, in accordance with the provisions of subsection (a) of this Section 4.02, and as to the approximate cost of mailing to such Securityholders the form of proxy or other communication, if any, specified in such application.

If the Trustee shall elect not to afford to such applicants access to the information preserved at the time by the Trustee in accordance with the provisions of subsection (a) of this Section 4.02, the Trustee shall, upon the written request of such applicants, mail to each Securityholder of such Series or all Securities, as the case may be, whose name and address appear in the information preserved at the time by the Trustee in accordance with the provisions of subsection (a) of this Section 4.02, a copy of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to the Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of mailing, unless within five days after such tender, the Trustee shall mail to such applicants and file with the Commission together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of the Trustee, such mailing would be contrary to the best interests of the Holders of Securities of such Series or all Securities, as the case may be, or could be in violation of applicable law. Such written statement shall specify the basis of such opinion. If the Commission, after opportunity for a hearing upon the objections specified in the written statement so filed, shall enter an order refusing to sustain any of such objections or if, after the entry of such order sustaining one or more of such objections, the Commission shall find, after notice and opportunity for hearing, that all the objections so sustained have been met and shall enter an order so declaring, the Trustee shall mail copies of such material to all such Securityholders with reasonable promptness after the entry of such order and the renewal of such tender; otherwise, the Trustee shall be relieved of any obligation or duty to such applicants respecting their application.

(c) Each and every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that the disclosure of any such information as to the names and addresses of the Holders of Securities in accordance with the provisions of subsection (b) of this Section 4.02, 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 enacted after the date hereof which does not specifically refer to Section 312(c) of the Trust Indenture Act, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under such subsection (b).

Section 4.03. Reports by the Company.

(a) The Company covenants to:

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

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(ii) file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by the Company with the conditions and covenants provided for in this Indenture as may be required from time to time by such rules and regulations, including, in the case of annual reports, if required by such rules and regulations, certificates or opinions of independent public accountants, conforming to the requirements of Section 15.05 hereof, as to compliance with conditions or covenants, compliance with which is subject to verification by accountants, but no such certificate or opinion shall be required if it is not required pursuant to Section 314(a)(2) of the Trust Indenture Act;

(iii) transmit by mail to the Holders of Securities in the manner and to the extent required by Section 313(c) of the Trust Indenture Act, within 30 days after the filing thereof with the Trustee, such summaries of any information, documents and reports required to be filed by the Company pursuant to subsections 4.03(a)(i) and 4.03(a)(ii) of this Section 4.03 as may be required to be transmitted to such Holders by rules and regulations prescribed from time to time by the Commission; provided that any such information, documents or reports referenced in filed or furnished with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval (including any successor thereto, "EDGAR") system shall be deemed to be filed with the Trustee and transmitted to the Holders as of the time such information, documents or reports are filed or furnished to the Commission by the Company via EDGAR;

(iv) furnish to the Trustee, not less often than annually on or before a date not more than four months after the end of each of its fiscal years ending after the date hereof, a brief certificate from the principal executive officer, principal financial officer or principal accounting officer of the Company as to his or her knowledge of the Company's compliance with all conditions and covenants under this Indenture. For purposes of this subsection 4.03(a)(iv), such compliance shall be determined without regard to any period of grace or requirement of notice provided under this Indenture; and

(v) deliver to the Trustee, as soon as possible and in any event within thirty days after the Company becomes aware of the occurrence of any Event of Default or an event which, with notice or the lapse of time or both, would constitute an Event of Default, an Officers' Certificate setting forth the details of such Event of Default or default and the action which the Company proposes to take with respect thereto.

(b) The Company's obligations under Section 4.03(a)(i) and (ii) shall be deemed satisfied, and no further filing with or delivery to the Trustee of copies of such information, documents or reports shall be required pursuant to such Sections, to the extent the Company has filed such information, documents or reports with the Commission via EDGAR. Delivery of such reports, information and documents to the Trustee is for informational purposes only, and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on

Officers' Certificates). The Trustee shall not be obligated to monitor or confirm, on a continuing basis or otherwise, the Company's compliance with the covenants or with respect to any reports or other documents filed on EDGAR or with the SEC under this Indenture.

Section 4.04. *Reports by the Trustee.*

(a) The Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto. If required by Section 313(a) of the Trust Indenture Act, the Trustee shall, within 60 days after each [-] following the first issuance of Securities under this Indenture, deliver to Holders in the manner required by Section 313(c) of the Trust Indenture Act a brief report, dated as of such [-], which complies with the provisions of such Section 313(a). The Trustee shall comply with Section 313(b)(2) of the Trust Indenture Act to the extent applicable.

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(b) A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each stock exchange, if any, upon which the Securities are listed, with the Commission and with the Company. The Company will promptly notify the Trustee when the Securities are listed on any stock exchange or market and of any delisting thereof.

ARTICLE 5
REMEDIES OF THE TRUSTEE AND SECURITYHOLDERS
ON EVENT OF DEFAULT

Section 5.01. *Event of Default Defined; Acceleration of Maturity; Waiver of Default.* In case one or more of the following Events of Default (unless it is either inapplicable to a particular Series or it is specifically deleted from or modified in the indenture supplement, the Company Board Resolution or other instrument establishing such Series and the form of Security for such Series) shall have occurred and be continuing with respect to any Series of Securities:

(a) default in the payment of any installment of interest upon any Security of such Series as and when the same shall become due and payable, and continuance of such default for a period of 30 days; or

(b) default in the payment of the principal of the Securities of such Series as and when the same shall become due and payable either at maturity, upon redemption (for any sinking fund payment or otherwise), by declaration or otherwise; or

(c) failure on the part of the Company duly to observe or perform any other of the covenants or agreements on the part of the Company in the Securities of such Series, or in this Indenture contained and relating to such Series, for a period of 90 days after the date on which written notice specifying such failure and requiring the Company to remedy the same and stating that such notice is a "**Notice of Default**" hereunder shall have been given by registered or certified mail, or by overnight air courier guaranteeing next day delivery, to the Company by the Trustee for the Securities of such Series, or to the Company and the Trustee by the Holders of not less than 25% in aggregate principal amount at maturity of the Securities of such Series then Outstanding; or

(d) the Company shall make an assignment for the benefit of creditors, or shall file a petition in bankruptcy; or the Company shall be adjudicated insolvent or bankrupt, or shall petition or shall apply to any court having jurisdiction in the premises for the appointment of a receiver, trustee, liquidator or sequestrator of, or for, the Company or any substantial portion of the property of the Company; or the Company shall commence any proceeding relating to the Company or any substantial portion of the property of the Company under any insolvency, reorganization, arrangement or readjustment of debt, dissolution, winding-up, adjustment, composition or liquidation law or statute of any jurisdiction, whether now or hereafter in effect (hereinafter in this clause (d) called "**Proceeding**"); or if there shall be commenced against the Company any Proceeding and an order approving the petition shall be entered, or such Proceeding shall remain undischarged or unstayed for a period of 90 days; or a receiver, trustee, liquidator or sequestrator of, or for, the Company or any substantial portion of the property of the Company shall be appointed and shall not be discharged within a period of 90 days; or the Company by any act shall indicate consent to or approval of or acquiescence in any Proceeding or the appointment of a receiver, trustee, liquidator or sequestrator of, or for, the Company or any substantial portion of the property of the Company; provided that a resolution or order for winding-up the Company with a view to its consolidation, amalgamation or merger with another entity or the transfer of its assets as a whole, or substantially as a whole, to such other entity as provided in Section 9.01 shall not make the rights and remedies herein enforceable under this clause (d) if such last-mentioned entity shall, as a part of such consolidation, amalgamation, merger or transfer, and within 90 days from the passing of the resolution or the date of the order, comply with the conditions to that end stated in Section 9.01; or

(e) any other Event of Default provided in the supplemental indenture or Company Board Resolution under which such Series of Securities is issued or in the form of Security for such Series;

then, solely with respect to Senior Securities of a Series, in each and every such case (other than an Event of Default under clause (d) above), so long as such Event of Default with respect to such Series shall not have been

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remedied or waived, unless the principal of all Securities of such Series shall have already become due and payable, either the Trustee for such Series or the Holders of not less than 25% in aggregate principal amount at maturity of the Securities of such Series then Outstanding hereunder, by notice in writing to the Company (and to the Trustee if given by such Holders), may declare the principal (or, in the case of Discount Securities, such principal amount as may be determined in accordance with the terms thereof) of all the Securities of such Series to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Securities of such Series contained to the contrary notwithstanding. With respect to Senior Securities and Subordinated Securities of a Series, in the case of an Event of Default described under clause (d) above, the principal of all Securities of such Series shall become immediately due and payable without any declaration or other act by the Trustee or the Holders. This provision, however, is subject to the condition that if at any time after the principal of the Securities of such Series (or, in the case of Discount Securities, such principal amount as may be determined in accordance with the terms thereof) shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, (x) the Company shall pay or shall deposit

with the Trustee a sum sufficient to pay all matured installments of interest, if any, upon all the Securities of such Series and the principal of any and all Securities of such Series which shall have become due otherwise than by such acceleration (with interest upon such principal and, to the extent that payment of such interest is enforceable under applicable law, upon overdue installments of interest, at the rate borne by the Securities of such Series (or, in the case of Discount Securities, at the yield to maturity) to the date of such payment or deposit) and in Dollars such amount as shall be sufficient to cover reasonable compensation to the Trustee, its agents, attorneys and counsel and all other expenses and liabilities incurred, and all advances made, by the Trustee, its agents, attorneys and counsel, and (y) any and all defaults under this Indenture, other than the nonpayment of the principal of Securities of such Series which shall have become due by such acceleration (only with respect to Senior Securities), shall have been remedied, then and in every such case the Holders of a majority in aggregate principal amount at maturity of the Securities of such Series then Outstanding, by written notice to the Company and to the Trustee for the Securities of such Series, may waive all defaults and rescind and annul such declaration and its consequences; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent default or shall impair any right consequent thereon.

Section 5.02. Collection of Indebtedness by Trustee; Trustee May Prove Debt. The Company covenants that (a) in case default shall be made in the payment of any installment of interest on any of the Securities of any Series when such interest shall have become due and payable, and such default shall have continued for a period of 30 days or (b) in case default shall be made in the payment of all or any part of the principal of any of the Securities of any Series when the same shall have become due and payable, whether upon maturity of the Securities of such Series or upon any redemption or by declaration or otherwise, then upon demand of the Trustee for the Securities of such Series, the Company will pay to the Trustee for the Securities of such Series, for the benefit of the Holders of the Securities of such Series, the whole amount that then shall have become due and payable on all Securities of such Series for principal of or interest, as the case may be (with interest to the date of such payment upon the overdue principal and, to the extent that payment of such interest is enforceable under applicable law, on overdue installments of interest at the same rate as the rate of interest specified in the Securities of such Series); and in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including reasonable compensation to the Trustee and each predecessor Trustee, their respective agents, attorneys and counsel, and any expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee.

Until such demand is made by the Trustee, the Company may pay the principal of and interest on the Securities of any Series to the Persons entitled thereto, whether or not the principal of and interest on the Securities of such Series are overdue.

In case the Company shall fail forthwith to pay such amounts upon such demand, the Trustee for the Securities of such Series, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Company or other obligor upon such Securities and collect in the manner provided by law out of the property of the Company or other obligor upon such Securities, wherever situated, the moneys adjudged or decreed to be payable.

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In case there shall be any judicial proceedings relative to the Company or other obligor upon such Securities, if any, or to the creditors or property of the Company or other obligor, the Trustee, irrespective of whether the principal of any Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 5.02, shall be entitled and empowered, by intervention in such proceedings or otherwise:

(a) to file and prove a claim or claims for the whole amount of principal (or, if the Securities of such Series are Discount Securities, such portion of the principal amount as may be due and payable with respect to the Securities of such Series pursuant to a declaration in accordance with Section 5.01) and interest owing and unpaid in respect of the Securities of such Series, and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee and each predecessor Trustee, and their respective agents, attorneys and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee) and of the Securityholders allowed in any judicial proceedings relative to the Company or other obligor upon all Securities of such Series, or to the creditors or property of the Company or other obligor; and

(b) to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute all amounts received with respect to the claims of the Securityholders and of the Trustee on their behalf; and any trustee, receiver or liquidator, custodian or other similar official is hereby authorized by each of the Holders to make payments to the Trustee for the Securities of such Series, and, in the event that such Trustee shall consent to the making of payments directly to the Securityholders, to pay to such Trustee such amounts as shall be sufficient to cover reasonable compensation to such Trustee, each predecessor Trustee and their respective agents, attorneys and counsel, and all other expenses and liabilities incurred, and all advances made, by such Trustee and each predecessor Trustee and all other amounts due to such Trustee or any predecessor Trustee pursuant to Section 6.06. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 6.06 hereof out of the estate in any such proceeding, shall be unpaid for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or vote for or accept or adopt on behalf of any Securityholder any plan of reorganization, arrangement, adjustment or composition affecting the Securities of any Series or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Securityholder in any such proceeding except, as aforesaid, to vote for the election of a trustee in bankruptcy or similar Person and be a member of a creditors' or other similar committee.

All rights of action and of asserting claims under this Indenture, or under any of the Securities of any Series, may be enforced by the Trustee for the Securities of such Series without the possession of any of the Securities of such Series or the production thereof at any trial or other proceedings relative thereto, and any such action or proceedings instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment, subject to the payment of the expenses, disbursements and compensation of the Trustee, each predecessor Trustee and their respective agents and attorneys, shall be for the ratable benefit of the Holders of the Securities of such Series in respect of which such action was taken.

In any proceedings brought by the Trustee for the Securities of any Series (and also any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party), the Trustee shall be held to represent all the Holders of the Securities of such Series in respect to which such action was taken, and it shall not be necessary to make any Holders of such Securities parties to any such proceedings.

Section 5.03. Application of Proceeds. Any moneys or property collected by the Trustee for the Securities of any Series pursuant to this Article, and after an Event of Default any money or other property distributable in respect of the Company's obligations under this Indenture, shall be applied in the following order at the date or dates fixed by such Trustee and, in case of the distribution of such moneys on account of principal or

interest, upon presentation of the Securities of such Series in respect of which moneys have been collected and stamping (or otherwise noting) thereon the payment, or issuing Securities of such Series in reduced principal amounts in exchange for the presented Securities of like Series if only partially paid, or upon surrender thereof if fully paid:

FIRST: To the payment of costs and expenses applicable to such Series in respect of which moneys have been collected, including reasonable compensation to the Trustee and each predecessor Trustee and their respective agents and attorneys and of all expenses and liabilities incurred, including the costs and expenses of collection incurred, and all advances made, by the Trustee and each predecessor Trustee and all other amounts due to the Trustee or any predecessor Trustee pursuant to Section 6.06;

SECOND: Subject to Article 14, in case the principal of the Securities of such Series in respect of which moneys have been collected shall not have become and be then due and payable, to the payment of interest on the Securities of such Series in default in the order of the maturity of the installments of such interest, with interest (to the extent that such interest is permissible by law and that such interest has been collected by the Trustee) upon the overdue installments of interest at the same rate as the rate of interest specified in such Securities, such payments to be made ratably to the Persons entitled thereto, without discrimination or preference;

THIRD: In case the principal of the Securities of such Series in respect of which moneys have been collected shall have become and shall be then due and payable, to the payment of the whole amount then owing and unpaid upon all the Securities of such Series for principal and interest, with interest upon the overdue principal, and (to the extent that payment of such interest is permissible by law and that such interest has been collected by the Trustee) upon overdue installments of interest at the same rate as the rate of interest specified in the Securities of such Series; and in case such moneys shall be insufficient to pay in full the whole amount so due and unpaid upon the Securities of such Series, then to the payment of such principal and interest without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Security of such Series over any other Security of such Series, ratably to the aggregate of such principal and accrued and unpaid interest; and

FOURTH: To the payment of the remainder, if any, to the Company or to such party as a court of competent jurisdiction shall direct.

The Trustee may fix a record date and payment date for any payment to Holders.

Section 5.04. Suits for Enforcement. In case an Event of Default has occurred, has not been waived and is continuing, the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any of such rights, either at law or in equity or in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

Section 5.05. Restoration of Rights on Abandonment of Proceedings. In case the Trustee for the Securities of any Series shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case, the Company and the Trustee shall be restored respectively to their former positions and rights hereunder, and all rights, remedies and powers of the Company, the Trustee and the Securityholders shall continue as though no such proceedings had been taken.

Section 5.06. Limitations on Suits by Securityholders. No Holder of any Security of any Series shall have any right by virtue or by availing of any provision of this Indenture to institute any action or proceeding at law or in equity or in bankruptcy or otherwise upon or under or with respect to this Indenture, or for the appointment of a trustee, receiver, liquidator, custodian or other similar official or for any other remedy hereunder, unless (a) such Holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof, as provided in Section 5.01, (b) the Holders of not less than a majority in aggregate principal amount of the

Securities of such Series then Outstanding shall have made written request upon the Trustee to institute such action or proceedings in its own name as trustee hereunder, (c) such Holder or Holders shall have offered to the Trustee such security or indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby, (d) the Trustee for 60 days after its receipt of such notice, request and offer of security or indemnity shall have failed to institute any such action or proceeding, and (e) no direction inconsistent with such written request shall have been given to the Trustee pursuant to Section 5.09; it being understood and intended, and being expressly covenanted by the taker and Holder of every Security with every other taker and Holder of a Security and the Trustee, that no one or more Holders of Securities of any Series shall have any right in any manner whatever, by virtue or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of any other such Holder of Securities, or to obtain or seek to obtain priority over or preference to any other such Holder or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all Holders of Securities of the applicable Series. For the protection and enforcement of the provisions of this Section 5.06, each and every Securityholder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Section 5.07. Unconditional Right of Securityholders to Institute Certain Suits. Notwithstanding any provision in this Indenture and any provision of any Security, the right of any Holder of any Security to receive payment of the principal of and interest on such Security at the respective rates and in the respective amount therein prescribed on or after the respective due dates expressed in such Security, or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 5.08. Powers and Remedies Cumulative; Delay or Omission Not Waiver of Default. Except as provided in Section 5.06, no right or remedy herein conferred upon or reserved to the Trustee or to the Securityholders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in

equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

No delay or omission of the Trustee or of any Securityholder to exercise any right or power accruing upon any Event of Default occurring and continuing as aforesaid shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein; and, subject to Section 5.06, every power and remedy given by this Indenture or by law to the Trustee, to the Securityholders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee, the Securityholders.

Section 5.09. Control by Securityholders. The Holders of a majority in aggregate principal amount of the Securities of each Series affected (with each Series treated as a separate class) at the time Outstanding shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee with respect to the Securities of such Series by this Indenture; provided that such direction shall not be otherwise than in accordance with law and the provisions of this Indenture and provided further that (subject to the provisions of Section 6.01) the Trustee shall have the right to decline to follow any such direction if the Trustee, being advised by counsel, shall determine that the actions or proceeding so directed may not lawfully be taken or that the actions or proceedings so directed would involve the Trustee in personal liability or if a trust committee of Responsible Officers in good faith shall determine that the actions or forbearances specified in or pursuant to such direction would be unduly prejudicial to the interests of Holders of the Securities of all Series so affected not joining in the giving of said direction, it being understood that (subject to Section 6.01) the Trustee shall have no duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders.

Nothing in this Indenture shall impair the right of the Trustee in its discretion to take any action deemed proper by the Trustee and which is not inconsistent with such direction or directions by Securityholders.

Section 5.10. Waiver of Past Defaults. Prior to the declaration of the acceleration of the maturity of the Securities of any Series as provided in Section 5.01, the Holders of a majority in aggregate principal amount of the

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Securities of such Series at the time Outstanding may, on behalf of the Holders of all the Securities of such Series waive any past default hereunder or its consequences, except a default in the payment of principal or interest on any of the Securities of such Series. In the case of any such waiver, the Company, the Trustee, the Holders of the Securities of such Series shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

Upon any such waiver, such default shall cease to exist and be deemed to have been cured and not to have occurred, and any Event of Default arising therefrom shall be deemed to have been cured and not to have occurred for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

Section 5.11. Trustee to Give Notice of Default, But May Withhold in Certain Circumstances. The Trustee shall transmit to the Securityholders of any Series notice, in the manner and to the extent provided in Section 313(c) of the Trust Indenture Act, of all defaults which have occurred with respect to such Series, such notice to be transmitted within 90 days after the occurrence thereof, unless such defaults shall have been cured before the giving of such notice (the term “**default**” or “**defaults**” for the purposes of this Section 5.11 and Section 6.02(h) being hereby defined to mean any event or condition which is, or with notice or lapse of time or both would become, an Event of Default); provided that, except in the case of default in the payment of the principal of or interest on any of the Securities of such Series or any default in the payment of any sinking fund installment or analogous obligation in respect of any of the Securities of such Series, the Trustee shall be protected in withholding such notice if and so long as the board of directors, executive committee or a trust committee of Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interests of the Securityholders of such Series. In the case of any default of the character specified in Section 5.01(c) with respect to Securities of such Series, no such notice to Holders shall be given until at least 30 days after the occurrence thereof.

Section 5.12. Right of Court to Require Filing of Undertaking to Pay Costs. All parties to this Indenture agree, and each Holder of any Security by such Holder’s acceptance thereof, shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys’ fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 5.12 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Securityholder or group of Securityholders of any Series holding in the aggregate more than 10% in aggregate principal amount of the Securities of such Series, or to any suit instituted by any Securityholder for the enforcement of the payment of the principal of or interest on any Security on or after the due date expressed in such Security.

ARTICLE 6

CONCERNING THE TRUSTEE

Section 6.01. Duties and Responsibilities of the Trustee; During Default; Prior to Default. With respect to the Holders of any Series of Securities issued hereunder, the Trustee, prior to the occurrence of an Event of Default with respect to the Securities of a particular Series and after the curing or waiving of all Events of Default which may have occurred with respect to such Series, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default with respect to the Securities of a Series has occurred (which has not been cured or waived) of which a Responsible Officer has actual knowledge, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent individual would exercise or use under the circumstances in the conduct of such individual’s own affairs.

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

(a) prior to the occurrence of an Event of Default with respect to the Securities of any Series and after the curing or waiving of all such Events of Default with respect to such Series which may have occurred:

(i) the duties and obligations of the Trustee with respect to the Securities of any Series shall be determined solely by the express provisions of this Indenture, and the Trustee need only perform such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

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

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

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders pursuant to Section 5.09 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture.

None of the provisions contained in this Indenture shall require the 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 there shall be reasonable ground for believing that the repayment of such funds or adequate indemnity against such liability is not reasonably assured to it. The Trustee shall not be required to give any bond or surety in respect of the performance of its powers or duties hereunder. The permissive rights or powers of the Trustee to do things enumerated in this Indenture shall not be construed as a duty of the Trustee.

Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the conditions of this Section 6.01.

Section 6.02. *Certain Rights of the Trustee.* Subject to Section 6.01:

(a) The Trustee may conclusively rely and shall be protected with respect to any actions or omissions conducted in reliance upon any Company Board Resolution, Officers' Certificate, Exchange Rate Officers' Certificate, Company Order, certificate pursuant to Section 4.03(a)(iv) or any other certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, note, coupon, security or other paper or document (whether in its original or facsimile form) believed by it to be genuine and to have been signed or presented by the proper party or parties.

(b) Any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by a Company Order, Company Board Resolution, or Officers' Certificate (unless other evidence in respect thereof be herein specifically prescribed).

(c) The Trustee may consult with counsel of its selection and any advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken,

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suffered or omitted to be taken by it hereunder in good faith and in accordance with such advice or Opinion of Counsel.

(d) The Trustee shall be under no obligation to exercise any of the trusts or powers vested in it by this Indenture at the request, order or direction of any of the Securityholders pursuant to the provisions of this Indenture, unless such Securityholders shall have offered to the Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities which might be incurred therein or thereby.

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

(f) The Trustee shall not be bound to make any investigation into the facts or matters stated in any Company Board Resolution, Officers' Certificate, Exchange Rate Officers' Certificate, certificate pursuant to Section 4.03(a)(iv), Company Order or any other certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, appraisal, bond, debenture, note, coupon, security or other paper or document unless requested in writing to do so by the Holders of not less than a majority in aggregate principal amount of the Securities of all Series affected then Outstanding.

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

(h) The Trustee shall not be deemed to have notice of any default or Event of Default (other than any Event of Default under Section 5.01(a) or 5.01(b)) unless a Responsible Officer has actual knowledge thereof or unless written notice of such default or Event of Default by the Company or by the Holders of at least 25% of the aggregate principal amount of the Securities is received by the Trustee at the Corporate Trust Office of the Trustee and such notice references the Securities and this Indenture.

(i) The rights, privileges, protections, immunities and benefits given to the Trustee, including its right to be compensated, reimbursed, and indemnified, are extended to, and shall be enforceable by, each Agent, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

(j) The Trustee may request that the Company deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture.

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

Section 6.03. *Trustee Not Responsible for Recitals, Disposition of Securities or Application of Proceeds Thereof.* The recitals contained herein and in the Securities, except the Trustee's certificate of authentication, shall be taken as the statements of the Company, and the Trustee makes no representation as to and assumes no responsibility for the correctness of the same. The Trustee makes no representation as to and shall not be responsible for the validity or sufficiency of this Indenture or of any Securities. The Trustee represents that it is duly authorized to execute and deliver this Indenture and perform its obligations hereunder. The Trustee shall not be accountable for the use or application by the Company of any of the Securities or of the proceeds thereof. The Trustee shall not be responsible for any money paid to the Company or upon the Company's direction under any provision of this Indenture, or for the use or application of any money received by any Paying Agent other than the Trustee. The Trustee shall not be bound to ascertain or inquire as to the performance, observance, or breach of any covenants, conditions, representations, warranties or agreements on the part of the Company, but the Trustee may require full information and advice as to the performance of the aforementioned covenants. Under no circumstances shall the

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Trustee be liable in its individual capacity for the obligations evidenced by the Securities. The Trustee shall not be responsible for any prospectus or other document in connection with the sale of the Securities. The Trustee shall not be responsible for and makes no representation as to any act or omission of any rating agency or any rating with respect to the Securities.

Section 6.04. *Trustee and Agents May Hold Securities; Collections, etc.* The Trustee, any Paying Agent, any Security registrar or any agent of the Company or the Trustee, in its individual or any other capacity, may become the owner or pledgee of Securities with the same rights it would have if it were not serving in such capacity and, subject to Sections 6.08 and 6.13, if operative, may otherwise deal with the Company and receive, collect, hold and retain collections from the Company with the same rights it would have if it were not serving in such capacity.

Section 6.05. *Moneys Held by Trustee.* Subject to the provisions of Section 10.04, all moneys received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by mandatory provisions of law. Neither the Trustee nor any agent of the Company or the Trustee shall be under any liability for interest on any moneys received by it hereunder.

Section 6.06. *Compensation and Indemnification of Trustee and Its Prior Claim.* The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, such compensation as shall be agreed in writing between the Company and the Trustee in Dollars (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) and the Company covenants and agrees to pay or reimburse the Trustee and each predecessor Trustee upon its request in Dollars for all reasonable expenses, disbursements and advances actually incurred or made by or on behalf of it in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and of all agents) except any such expense, disbursement or advance as may arise from its negligence or willful misconduct, as finally adjudicated by a court of competent jurisdiction. The Company also covenants to indemnify the Trustee and each predecessor Trustee for, and to hold it harmless against, any and all losses, liabilities, damages, claims and expenses, including taxes (other than taxes based on the income of the Trustee), actually incurred without negligence or willful misconduct on its part as finally adjudicated by a court of competent jurisdiction arising out of or in connection with the acceptance or administration of this Indenture or the trusts hereunder and its duties hereunder, including the reasonable costs and expenses of defending itself against or investigating any claim (whether asserted by the Company, a Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder. The obligations of the Company under this Section 6.06 to compensate and indemnify the Trustee and each predecessor Trustee and to pay or reimburse the Trustee and each predecessor Trustee for reasonable expenses, disbursements and advances shall constitute additional indebtedness hereunder and shall survive the satisfaction and discharge of this Indenture and the resignation or removal of the Trustee. Such additional indebtedness shall be secured by a lien prior to that of the Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the Holders of particular Securities, and the Securities are hereby subordinated to such lien. All indemnifications and releases from liability granted hereunder to the Trustee shall extend to its officers, directors, employees, agents, attorneys, custodians, successors and assigns.

When the Trustee incurs expenses or renders services in connection with an Event of Default specified in clause (d) of Section 5.01, the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable federal or state bankruptcy, insolvency or other similar law. "Trustee" for the purposes of this Section 6.06 shall include any predecessor Trustee and the Trustee in each of its capacities hereunder and each agent, custodian and other person employed to act hereunder; *provided, however*, that the negligence or willful misconduct of any Trustee hereunder shall not affect the rights of any other Trustee hereunder.

Section 6.07. *Right of Trustee to Rely on Officers' Certificate, etc.* Subject to Sections 6.01 and 6.02, whenever in the administration of the trusts of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of bad faith on the part of the

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Trustee, be deemed to be conclusively proved and established by an Officers' Certificate or an Opinion of Counsel delivered to the Trustee, and such Officers' Certificate or Opinion of Counsel, in the absence of bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken, suffered or omitted by it or under the provisions of this Indenture upon the faith thereof.

Section 6.08. *Disqualification of Trustee; Conflicting Interests.* If the Trustee for the Securities of any Series has or shall acquire any conflicting interest, as defined in the Trust Indenture Act, the Trustee shall, within 90 days after ascertaining that it has such conflicting interest, and if the default (as defined in the Trust Indenture Act) to which such conflicting interest relates has not been cured or waived or otherwise eliminated before the end of such 90-day period, either eliminate such conflicting interest or resign in the manner and with the effect specified in the Trust Indenture Act and this Indenture. If the Trustee does not eliminate such conflicting interest or resign, then, within 10 days of the expiration of such 90-day period, the Trustee shall transmit notice of its failure to do so to each Holder in the manner and to the extent provided in Section 313(c) of the Trust Indenture Act. Further, if the Trustee does not so resign, each holder of the Securities of any Series for which such Trustee acts as trustee shall have the rights provided under, and subject to the limitations set forth in, Section 310(b)(iii) of the Trust Indenture Act. To the extent permitted by the Trust Indenture Act, the Trustee shall not be deemed to have a conflicting interest by virtue of being a trustee under this Indenture with respect to Securities of more than one Series.

Section 6.09. *Persons Eligible for Appointment as Trustee.* The Trustee for each Series of Securities hereunder shall at all times be a corporation organized and doing business under the laws of the United States of America or of any state or the District of Columbia having (or, in the case of a Trustee included in a bank holding company system, the related bank holding company having) a combined capital and surplus of at least \$50,000,000 and which is authorized under such laws to exercise corporate trust powers and is subject to supervision or examination by federal, state or District of Columbia authority and which has a Corporate Trust Office in any state of the United States of America. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section 6.09, 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. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 6.09, the Trustee shall resign immediately in the manner and with the effect specified in Section 6.10. Neither the Company nor any other obligor upon the Securities shall serve as the Trustee pursuant to this Indenture.

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

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

(b) The Trustee, or any trustee or trustees hereafter appointed, may at any time resign with respect to one or more or all Series of Securities by giving 30 days' written notice of resignation to the Company and by mailing notice thereof to the Holders in the manner and to the extent provided in Section 15.04. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee or trustees with respect to the applicable Series by written instrument in duplicate, authorized by a Company Board Resolution and executed by the Company, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee or trustees. If no successor trustee shall have been so appointed with respect to any Series and have accepted appointment within 60 days after the mailing of such notice of resignation, the resigning Trustee may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor trustee, or any Securityholder who has been a bona fide Holder of a Security or Securities of the applicable Series for at least six months may, subject to the provisions of Section 5.12, on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

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

(i) the Trustee shall fail to comply with the provisions of Section 6.08 with respect to any Series of Securities after written request therefor by the Company pursuant to a Company Order or by any Securityholder who has been a bona fide Holder of a Security or Securities of such Series for at least six months unless the Trustee's duty to resign is stayed in accordance with the provisions of Section 310(b) of the Trust Indenture Act; or

(ii) the Trustee shall cease to be eligible in accordance with the provisions of Section 6.09 and shall fail to resign upon written request by the Company pursuant to a Company Order or by any Securityholder; or

(iii) the Trustee shall become incapable of acting with respect to any Series of the Securities, or shall be adjudged a bankrupt or insolvent, or a receiver or liquidator of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation;

then, in any such case, the Company may remove the Trustee with respect to the applicable Series of Securities and appoint a successor trustee for such Series by written instrument upon 30 day's written notice, in duplicate, authorized by a Company Board Resolution and executed by the Company, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 5.12, any Securityholder who has been a bona fide Holder of a Security or Securities of such Series for at least six months may on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee with respect to such Series. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(d) The Holders of a majority in aggregate principal amount of the Securities of each Series at the time Outstanding may at any time remove the Trustee with respect to Securities of such Series and appoint a successor trustee with respect to the Securities of such Series by delivering to the Trustee so removed, to the successor trustee so appointed and to the Company the evidence provided for in Section 7.01 of the action in that regard taken by the Securityholders.

If no successor trustee shall have been appointed with respect to such Series within 30 days after the mailing of such notice of removal, the Trustee being removed may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor trustee with respect to the Securities of such Series.

(e) Any resignation or removal of the Trustee with respect to any Series and any appointment of a successor trustee with respect to such Series pursuant to any of the provisions of this Section 6.10 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 6.11.

Section 6.11. *Acceptance of Appointment by Successor Trustee.* Any successor trustee appointed as provided in Section 6.10 shall execute and deliver to the Company and to its predecessor Trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor Trustee with respect to all or any applicable Series shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all rights, powers, duties and obligations with respect to such Series of its predecessor hereunder, with like effect as if originally named as trustee for such Series hereunder; but, nevertheless, on the written request of the Company pursuant to a Company Order or of the successor trustee, upon payment of its charges then unpaid, the trustee ceasing to act shall pay over to the successor trustee all moneys at the time held by it hereunder and shall execute and deliver an instrument transferring to such successor trustee all such rights, powers, duties and obligations. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all

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such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a prior claim upon all property or funds held or collected by such trustee to secure any amounts then due it pursuant to the provisions of Section 6.06.

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

No successor trustee with respect to any Series of Securities shall accept appointment as provided in this Section 6.11 unless at the time of such acceptance such successor trustee shall be qualified under the provisions of Section 6.08 and eligible under the provisions of Section 6.09.

Upon acceptance of appointment by any successor trustee as provided in this Section 6.11, the Company shall give notice in the manner and to the extent provided in Section 15.04 to the Holders of Securities of any Series for which such successor trustee is acting as trustee at their last addresses as they shall appear in the Security register. If the acceptance of appointment is substantially contemporaneous with the resignation, then the notice called for by the preceding sentence may be combined with any notice called for by Section 6.10. If the Company fails to mail such notice within ten days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of the Company.

Section 6.12. *Merger, Conversion, Consolidation or Succession to Business of Trustee.* Any entity into which the Trustee may be merged or converted or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any entity succeeding to all or substantially all the corporate trust business of the Trustee, shall become the successor trustee hereunder; provided that such entity shall be qualified under the provisions of Section 6.08 and eligible under the provisions of Section 6.09, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

In case at the time such successor trustee shall succeed to the trusts created by this Indenture any of the Securities of any Series shall have been authenticated but not delivered, any such successor trustee may adopt the certificate of authentication of any predecessor Trustee and deliver such Securities so authenticated; and, in case at that time any of the Securities of any Series shall not have been authenticated, any successor trustee may authenticate such Securities either in the name of any predecessor Trustee hereunder or in the name of the successor trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Securities of such Series or in this Indenture provided that the certificate of the Trustee shall have; provided that the right to adopt the certificate of authentication of any predecessor Trustee or to authenticate Securities of any Series in the name of any predecessor Trustee shall apply only to its successor or successors by merger, conversion or consolidation.

Section 6.13. *Preferential Collection of Claims Against the Company.* If and when the Trustee shall be or become a creditor, directly or indirectly, secured or unsecured, of the Company (or any other obligor upon the Securities), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Company (or any such other obligor), excluding any creditor relationship listed in Section 311(b) of the Trust Indenture Act.

ARTICLE 7 CONCERNING THE SECURITYHOLDERS

Section 7.01. *Evidence of Action Taken by Securityholders.*

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by a specified percentage in principal amount of the Securityholders of any or all Series may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such specified percentage of Securityholders in person or by agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee. Proof of execution of any instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Sections 6.01 and 6.02) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Article.

(b) The ownership of Securities shall be proved by the Security register.

Section 7.02. *Proof of Execution of Instruments.* Subject to Sections 6.01 and 6.02, the execution of any instrument by a Securityholder or his agent or proxy may be proved in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee.

Section 7.03. *Holders to Be Treated as Owners.* The Company, the Trustee and any agent of the Company or the Trustee may deem and treat the Person in whose name any Security shall be registered upon the Security register for such Series as the absolute owner of such Security (whether or not such Security shall be overdue and notwithstanding any notation of ownership or other writing thereon) for the purpose of receiving payment of or on account of the principal of and interest on such Security and for all other purposes; and none of the Company, the Trustee or any agent of the Company or the Trustee shall be affected by any notice to the contrary. All such payments so made to any such Person, or upon such Person's order, shall be valid, and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for moneys payable upon any such Security.

Section 7.04. *Securities Owned by Company Deemed Not Outstanding.* In determining whether the Holders of the requisite aggregate principal amount of Outstanding Securities of any or all Series have concurred in any direction, consent or waiver under this Indenture or whether a quorum is present at a meeting of Holders of Securities, Securities that are owned by the Company or any other obligor on the Securities with respect to which such determination is being made or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any other obligor on the Securities with respect to which such determination is being made shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, except that, for the purpose of determining whether the Trustee shall be protected in relying on any such direction, consent

or waiver, and for the purpose of determining the presence of a quorum, only Securities which a Responsible Officer actually knows are so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or other obligor on such Securities or any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any other obligor on such Securities. In case of a dispute as to such right, the advice of counsel shall be full protection in respect of any decision made by the Trustee in accordance with such advice. Upon request of the Trustee, the Company shall furnish to the Trustee promptly an Officers' Certificate listing and identifying all Securities, if any, known by the Company to be owned or held by or for the account of any of the above-described Persons; and, subject to Sections 6.01 and 6.02, the Trustee shall be entitled to accept such Officers' Certificate as conclusive evidence of the facts therein set forth and of the fact that all Securities not listed therein are Outstanding for the purpose of any such determination.

Section 7.05. *Right of Revocation of Action Taken.* At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 7.01, of the taking of any action by the Holders of the percentage in aggregate principal amount of the Securities of any or all Series, as the case may be, specified in this Indenture in connection with such action, any Holder of a Security the serial number of which is shown by the evidence to be included

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among the serial numbers of the Securities the Holders of which have consented to such action may, by filing written notice at the Corporate Trust Office and upon proof of holding as provided in this Article, revoke such action so far as it concerns such Security. Except as aforesaid, any such action taken by the Holder of any Security shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Security and of any Securities issued in exchange or substitution therefor, irrespective of whether or not any notation in regard thereto is made upon any such Security. Any action taken by the Holders of the percentage in aggregate principal amount of the Securities of any or all Series, as the case may be, specified in this Indenture in connection with such action shall be conclusively binding upon the Company, the Trustee and the Holders of all the Securities affected by such action.

Section 7.06. *Record Date for Determination of Holders Entitled to Vote.* The Company may, in the circumstances permitted by the Trust Indenture Act, set a record date for the purpose of determining the Securityholders entitled to give or take any request, demand, authorization, direction, notice, consent, waiver or other action, or to vote on any action authorized or permitted to be given or taken by Securityholders. If not set by the Company prior to the first solicitation of a Securityholder made by any Person in respect of any such action, or, in the case of any such vote, prior to such vote, the record date for any such action or vote shall be the 30th day (or, if later, the date of the most recent list of Holders required to be provided pursuant to Section 4.01) prior to such first solicitation or vote, as the case may be. With regard to any record date, only the Holders on such date (or their duly appointed proxies) shall be entitled to give or take, or vote on, the relevant action.

ARTICLE 8

SUPPLEMENTAL INDENTURES

Section 8.01. *Supplemental Indentures Without Consent of Securityholders.* The Company, when authorized by a Company Board Resolution, and the Trustee for the Securities of any or all Series may, from time to time and at any time, enter into one or more indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act as in force at the date of the execution thereof), in form satisfactory to such Trustee, for one or more of the following purposes:

- (a) to evidence the succession of another entity to the Company or successive successions, and the assumption by such entity of the covenants, agreements and obligations of the Company herein and in the Securities;
- (b) to add to the Events of Default such further Events of Default for the protection of the Holders of Securities of any or all Series (and, if such Events of Default are to be for the benefit of less than all the Series of Securities stating that such Events of Default are being added solely for the benefit of one or more particular Series); provided, that, in respect of any such additional Events of Default, such supplemental indenture may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such an Event of Default or may limit the remedies available to the Trustee upon such an Event of Default or may limit the rights of the Holders of the applicable Securities upon such an Event of Default;
- (c) to add to the covenants of the Company such further covenants for the protection of the Holders of Securities of any or all Series (and, if such additional covenants are to be for the benefit of less than all the Series of Securities stating that such covenants are being added solely for the benefit of one or more particular Series), or to surrender any right or power herein conferred upon the Company with regard to all or any Securities of any or all Series (and, if such surrender is to be for the benefit of less than all the Series of Securities stating that such surrender is being added solely for the benefit of one or more particular Series);
- (d) to cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental indenture which may be defective or inconsistent with any other provision contained herein or in any supplemental indenture; or to make such other provisions in regard to matters or questions arising under this Indenture or under any supplemental indenture as the Company Board of Directors may deem necessary or desirable and which shall not materially and adversely affect the interests of the Holders of the Securities;

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- (e) to establish the form, terms and conditions of Securities of any Series as permitted by Sections 2.01 and 2.03, including, without limitation, but solely insofar as it relates to Subordinated Securities, any subordination provisions, including Article 14 herein, and any deletions from or additions or changes to this Indenture in connection therewith (provided that any such deletions, additions and changes shall not be applicable to any other Series of Securities then Outstanding);
- (f) to evidence and provide for the acceptance of appointment hereunder by a successor trustee with respect to the Securities of one or more Series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than the one Trustee, pursuant to the requirements of Section 6.11;

(g) to delete, modify or add provisions of this Indenture; provided that, except as otherwise contemplated by Section 2.03, such deletion, modification or addition does not apply to any Outstanding Security created prior to the date of such supplemental indenture;

(h) to add guarantors, or to secure, or, if applicable, provide additional security for, any Securities and to provide for matters relating thereto, and to provide for the release of any collateral as security for any Securities;

(i) to amend or supplement any provision contained herein, which was required to be contained herein in order for this Indenture to be qualified under the Trust Indenture Act, if the Trust Indenture Act or regulations thereunder change what is so required to be included in qualified indentures, in any manner not inconsistent with what then may be required for such qualification; or

(j) to conform the text of any provision herein or in any indenture supplemental hereto or in any Security to any description thereof in a prospectus, prospectus supplement or other offering document.

The Trustee is hereby authorized to join with the Company in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations which may be therein contained and to accept collateral thereunder, but the Trustee shall not be obligated to enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Any supplemental indenture authorized by the provisions of this Section 8.01 may be executed without the consent of the Holders of any of the Securities at the time Outstanding, notwithstanding any of the provisions of Section 8.02.

Section 8.02. Supplemental Indentures with Consent of Securityholders. With the consent (evidenced as provided in Article 7) of the Holders of not less than a majority in aggregate principal amount of the Securities at the time Outstanding of each Series affected by such supplemental indenture (treated as one class), the Company, when authorized by a Company Board Resolution, and the Trustee may, from time to time and at any time, enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act as in force at the date of execution thereof) for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental indenture or of modifying in any manner the rights of the Holders of the Securities of each such Series; provided, that the following modifications and amendments will not be effective against any Holder without such Holder's consent: (a) a change in the stated maturity date of any payment of principal or interest; (b) a reduction in the principal amount of, or interest on, any Security; (c) an alteration or impairment of the right to convert at the rate or upon the terms provided in the Indenture; (d) an impairment of a Holder's right to sue the Company for the enforcement of payments due on the Securities; or (e) a reduction in the percentage of Outstanding Securities required to consent to a modification or amendment of the Indenture or required to consent to a waiver of compliance with certain provisions of the Indenture or certain defaults under the Indenture.

Upon request by the Company pursuant to a Company Order, accompanied by a copy of a Company Board Resolution authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee for

such Series of Securities of evidence of the consent of Securityholders as aforesaid and other documents, if any, required by Section 7.01, the Trustee for such Series of Securities shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects such Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case such Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

It shall not be necessary for the consent of the Securityholders under this Section 8.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

Promptly after the execution by the Company and the Trustee of any supplemental indenture pursuant to the provisions of this Section 8.02, the Company shall give notice in the manner and to the extent provided in Section 15.04 to the Holders of Securities of each Series affected thereby at their addresses as they shall appear on the Securities register of the Company, setting forth in general terms the substance of such supplemental indenture. Any failure of the Company to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture.

For the purposes of this Section 8.02 only, if the Securities of any Series are issuable upon the exercise of warrants, each holder of an unexercised and unexpired warrant with respect to such Series shall be deemed to be a Holder of Outstanding Securities of such Series in the amount issuable upon the exercise of such warrant. For such purposes, the ownership of any such warrant shall be determined by the Company in a manner consistent with customary commercial practices. The Trustee for such Series shall be entitled to rely on an Officers' Certificate as to the principal amount of Securities of such Series in respect of which consents shall have been executed by holders of such warrants.

Section 8.03. Effect of Supplemental Indenture. Upon the execution of any supplemental indenture pursuant to the provisions hereof, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the Holders of Securities of each Series affected thereby shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 8.04. Documents to Be Given to Trustee. Upon request by the Company pursuant to a Company Order, accompanied by a copy of a Company Board Resolution authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee for such Series of Securities of evidence of the consent of Securityholders (if the supplemental indenture is executed pursuant to Section 8.02), an Officers' Certificate and an Opinion of Counsel stating that the execution of such amendment or supplement is authorized or permitted by this Indenture, that all conditions precedent thereto have been met or waived, and that it will be valid and binding upon the Company and enforceable in accordance with its terms as conclusive evidence that any supplemental indenture executed pursuant to this Article 8 complies with the applicable provisions of this Indenture. The Trustee for such Series of Securities shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects such Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case such Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

Section 8.05. *Notation on Securities in Respect of Supplemental Indentures.* Securities of any Series authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article may bear, upon the direction of the Company, a notation in form satisfactory to the Trustee for the Securities of such Series as to any matter provided for by such supplemental indenture or as to any waiver granted by the Holders that does not require a supplemental indenture. If the Company or the Trustee shall so determine, new Securities of any Series, so modified as to conform, in the opinion of the Trustee and the Company, to any modification of this Indenture contained in any such supplemental indenture may be prepared and executed by the Company, authenticated by the Trustee and delivered in exchange for the Securities of such Series then Outstanding.

Failure to make the appropriate notation or issue a new Security will not affect the validity and effect of such amendment, supplement or waiver.

ARTICLE 9
CONSOLIDATION, MERGER, SALE OR CONVEYANCE

Section 9.01. *Company May Consolidate, etc., on Certain Terms.*

(a) Nothing contained in this Indenture or in any of the Securities shall prevent any consolidation or merger of the Company with or into any other entity or entities (whether or not affiliated with the Company), or successive consolidations or mergers in which the Company or its successor or successors shall be a party or parties, or shall prevent any sale, conveyance or lease of all or substantially all the property of the Company to any other entity (whether or not affiliated with the Company) authorized to acquire and operate the same; provided, that in any such case: (i) either the Company shall be the surviving or continuing entity or the resulting or acquiring entity, if other than the Company, is organized and existing under the laws of a United States jurisdiction and assumes pursuant to a supplemental indenture all of the Company's responsibilities and liabilities under the Indenture, including the payment of all amounts due on the Securities and performance of the covenants in the Indenture; (ii) immediately after the transaction, and giving effect to the transaction, no Event of Default under the Indenture exists; and (iii) the Company has delivered to the Trustee an Officers' Certificate stating that the transaction and, if a supplemental indenture is required in connection with the transaction, the supplemental indenture comply with the Indenture and that all conditions precedent to the transaction contained in the Indenture have been satisfied.

(b) If the Company consolidates or merges with or into any other entity or sells or leases all or substantially all of the Company's assets in compliance with the terms and conditions of this Indenture, the resulting or acquiring entity will be substituted for the Company in this Indenture and the Securities with the same effect as if such entity had been an original party to this Indenture and the Securities. As a result, such successor entity may exercise the Company's rights and powers under the Indenture and the Securities, in the Company's name and, except in the case of a lease, the Company will be released from all its liabilities and obligations under the Indenture and under the Securities.

(c) Notwithstanding the foregoing provisions, the Company may transfer all of its property and assets to another entity if, immediately after giving effect to the transfer, such entity is a Wholly Owned Subsidiary.

Section 9.02. *Successor Corporation Substituted.* In case of any such consolidation, merger, sale or conveyance, and following such an assumption by the successor entity, such successor entity shall succeed to and be substituted for the Company, with the same effect as if it had been named herein. Such successor entity may cause to be signed, and may issue either in its own name or in the name of the Company prior to such succession any or all of the Securities issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such successor entity instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver any Securities which previously shall have been signed and delivered by the officers of the Company to the Trustee for authentication, and any Securities which such successor entity thereafter shall cause to be signed and delivered to the Trustee for that purpose. All of the Securities so issued shall in all respects have the same legal rank and benefit under this Indenture as the Securities theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Securities had been issued at the date of the execution hereof.

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

In the event of any such sale or conveyance (other than a conveyance by way of lease) by the Company or any successor entity which shall theretofore have become such in the manner described in this Article 9, the

Company or such successor entity, as applicable, shall be discharged from all obligations and covenants under this Indenture and the Securities and may be liquidated and dissolved.

Section 9.03. *Opinion of Counsel to Trustee.* The Company shall deliver to the Trustee an Opinion of Counsel prepared in accordance with Section 15.05, and the Trustee may receive such Opinion of Counsel as conclusive evidence, stating that any such consolidation, merger, sale, lease or conveyance, any such assumption, any such supplemental indenture, or any such liquidation or dissolution, complies with the applicable provisions of this Indenture.

ARTICLE 10
SATISFACTION AND DISCHARGE; DEFEASANCE

Section 10.01. *Satisfaction and Discharge of Indenture.* If at any time (a) the Company shall have paid or caused to be paid the principal of and interest on all the Securities of any Series Outstanding hereunder (other than Securities which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.09) as and when the same shall have become due and payable, or (b) the Company shall have delivered to the Trustee for cancellation all Securities of any Series theretofore authenticated (other than any Securities of such Series which have been destroyed, lost or stolen and which shall have been replaced or paid as provided in Section 2.09) or (c) (i) all the Securities of such Series not theretofore delivered to the Trustee for cancellation shall have become due and payable, or are by their terms to become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption and (ii) the Company shall have irrevocably

deposited or caused to be deposited with the Trustee as trust funds the entire amount and/or the required Government Obligations maturing as to principal and interest in such amounts and at such times as will, in aggregate, ensure the availability of cash sufficient, in the opinion of a firm of independent certified public accountants delivered to the Trustee if Government Obligations are delivered, to pay at maturity or upon redemption all Securities of such Series (other than any Securities of such Series which shall have been destroyed, lost or stolen and which shall have been replaced or paid as provided in Section 2.09) not theretofore delivered to the Trustee for cancellation, including principal and interest due or to become due to such date of maturity as the case may be, and if, in any such case, the Company shall also pay or cause to be paid all other sums payable hereunder by the Company with respect to Securities of such Series, then this Indenture shall cease to be of further effect with respect to Securities of such Series (except as to (A) rights of registration of transfer and exchange, and the Company's right of optional redemption, (B) substitution of mutilated, defaced, destroyed, lost or stolen Securities, (C) rights of Holders to receive payments of principal thereof and interest thereon upon the original stated due dates therefor (but not upon acceleration) and remaining rights of the Holders to receive mandatory sinking fund payments, if any, (D) the rights, powers, trusts, duties and immunities of the Trustee hereunder and the Company's obligations in connection therewith, and (E) the rights of the Securityholders of such Series as beneficiaries hereof with respect to the property so deposited with the Trustee payable to all or any of them), and, subject to Section 10.06, the Trustee, upon request by the Company pursuant to a Company Order accompanied by an Officers' Certificate and an Opinion of Counsel, shall execute proper instruments acknowledging such satisfaction and discharge of this Indenture with respect to Securities of such Series.

Section 10.02. Defeasance and Covenant Defeasance.

(a) Unless otherwise specified pursuant to Section 2.03, the Securities of any Series shall be subject to defeasance pursuant to Section 10.02(b) or covenant defeasance pursuant to Section 10.02(c), in accordance with any applicable requirements specified pursuant to Section 2.03 and upon compliance with the conditions set forth below in Section 10.02(d). The Company may elect, at its option, at any time, to have Section 10.02(b) or Section 10.02(c) applied to any Securities of any Series so subject to defeasance or covenant defeasance. Any such election shall be evidenced by a Company Board Resolution or in another manner specified as contemplated by Section 2.03 for such Securities.

(b) Upon the Company's exercise of its option, if any, to have this Section 10.02(b) applied to any Securities of any Series, on and after the date the conditions set forth in Section 10.02(d) are satisfied, the Company shall be deemed to have satisfied and discharged the entire indebtedness represented by such Securities

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and to have satisfied and discharged all of its other obligations under such Securities and this Indenture, insofar as such Securities are concerned ("**Defeasance**").

Subject to compliance with this Section 10.02, the Company may exercise its option, if any, to have this Section 10.02(b) applied to any Securities notwithstanding the prior exercise of its option, if any, to have Section 10.02(c) applied to such Securities.

In connection with Defeasance with respect to any Securities of any Series, the irrevocable trust agreement contemplated by Section 10.02(d) shall include, among other things, provision for (i) payment of the principal of and interest on such Securities when due (by redemption, sinking fund payments or otherwise), (ii) the payment of the expenses of the Trustee incurred or to be incurred in connection with carrying out such trust provisions, (iii) rights of registration, transfer, substitution and exchange of such Securities in accordance with the terms stated in this Indenture, and (iv) the rights, powers, trusts, duties and immunities of the Trustee hereunder and the Company's obligations in connection therewith as stated in this Indenture.

Subject to Section 10.06, the Trustee, upon request of the Company pursuant to a Company Order accompanied by an Officers' Certificate and Opinion of Counsel, shall execute proper instruments acknowledging any satisfaction and discharge pursuant to this Section 10.02(b).

(c) Upon the Company's exercise of its option, if any, to have this Section 10.02(c) applied to any Securities of any Series, on and after the date the conditions set forth in Section 10.02(d) are satisfied (i) the Company shall be released from such of its obligations and covenants established pursuant to Section 2.03 for the benefit of the Holders of such Securities as are specified in the Company Board Resolutions or supplemental indenture establishing such obligations and covenants, and (ii) the occurrence of any event contemplated by Section 5.01(c) with respect to such of its obligations and covenants established pursuant to Section 2.03 for the benefit of the Holders of such Securities as are specified in the Company Board Resolutions or supplemental indenture establishing such obligations and covenants or by Section 5.01(e) to the extent specified in the Company Board Resolutions or supplemental indenture establishing such event as an Event of Default shall be deemed not to be or result in an Event of Default, in each case with respect to such Securities ("**Covenant Defeasance**"). Upon the effectiveness of Covenant Defeasance with respect to any Securities of any Series, with respect to such Securities, the Company may omit to comply with and shall have no liability in respect of any of the Company's obligations and covenants established pursuant to Section 2.03 for the benefit of the Holders of such Securities as are specified in the Company Board Resolutions or supplemental indenture establishing such obligations and covenants, whether directly or indirectly by reason of any reference elsewhere herein to any such obligation or covenant or by reason of any reference in any such obligation or covenant to any other provision herein or in any other document, but, except as provided in the immediately preceding sentence, the remainder of this Indenture and such Securities of such Series shall be unaffected thereby.

(d) The following shall be the conditions to the application of Section 10.02(b) or Section 10.02(c) to any Securities of any Series:

(i) The Company shall have irrevocably deposited or caused to be deposited with the Trustee at its Corporate Trust Office or such other office as the Trustee may designate, as trust funds in trust solely for the benefit of the Holders of Securities of such Series, (A) immediately available funds and/or (B) the required Government Obligations maturing as to principal and interest in such amounts and at such times as are sufficient, in the opinion of a firm of independent certified public accountants, without consideration of any reinvestment of such principal or interest, to pay the principal of and interest on the Outstanding Securities of such Series to maturity or redemption, as the case may be; provided that the Trustee shall have been irrevocably instructed to apply such money or the proceeds of such Government Obligations to the payment of said principal of and interest on the Outstanding Securities of such Series.

(ii) In the event of an election to have Section 10.02(b) apply to any Securities of any Series, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of such Securities will not recognize income, gain or loss for federal income tax purposes as a

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result of the Defeasance to be effected with respect to such Securities and will be subject to federal income tax on the same amount, in the same manner and at the same times as would be the case if such Defeasance had not occurred.

(iii) In the event of an election to have Section 10.02(c) apply to any Securities of any Series, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of such Securities will not recognize income, gain or loss for federal income tax purposes as a result of the Covenant Defeasance to be effected with respect to such Securities and will be subject to federal income tax on the same amount, in the same manner and at the same times as would be the case if such Covenant Defeasance had not occurred.

(iv) The Company must deliver to the Trustee an Officers' Certificate and an Opinion of Counsel each stating that all conditions precedent relating to the Legal Defeasance or the Covenant Defeasance have been complied with.

Section 10.03. Application by Trustee of Funds Deposited for Payment of Securities. Subject to Section 10.05, all moneys deposited with the Trustee pursuant to this Article 10 shall be held in trust and applied by it to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent), to the Holders of the particular Securities of such Series for the payment or redemption of which such moneys have been deposited with the Trustee, of all sums due and to become due thereon for principal and interest, but such money need not be segregated from other funds except to the extent required by law. The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or non-callable Government Obligations deposited pursuant to Section 10.02 or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Securities.

Section 10.04. Repayment of Moneys Held by Paying Agent. In connection with the satisfaction and discharge of this Indenture with respect to Securities of any Series all moneys then held by any Paying Agent under the provisions of this Indenture with respect to such Series of Securities, shall, upon a Company Order, be repaid to it or paid to the Trustee and thereupon such Paying Agent shall be released from all further liability with respect to such moneys.

Section 10.05. Return of Unclaimed Moneys Held by Trustee and Paying Agent. Anything in this Article 10 to the contrary notwithstanding, any moneys deposited with or paid to the Trustee or any Paying Agent for the payment of the principal of or interest on any Security of any Series and not applied but remaining unclaimed for two years after the date upon which such principal or interest shall have become due and payable, shall, upon direction by the Company pursuant to a Company Order unless otherwise required by mandatory provisions of applicable escheat or abandoned or unclaimed property law, be repaid to the Company by the Trustee for such Series or such Paying Agent, and the Holder of the Security of such Series shall, unless otherwise required by mandatory provisions of applicable escheat or abandoned or unclaimed property laws, thereafter look only to the Company for any payment which such Holder may be entitled to collect, and all liability of the Trustee or any Paying Agent with respect to such moneys shall thereupon cease.

Section 10.06. Reinstatement of Obligations. If the Trustee is unable to apply any funds or Government Obligations in accordance with this Article 10 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the obligations of the Company under this Indenture and the Securities for which such application is prohibited shall be revived and reinstated as if no deposit had occurred pursuant to this Article 10 until such time as the Trustee is permitted to apply all such funds or Government Obligations in accordance with this Article 10 or is able to convert all such funds or Government Obligations; provided, however, that, if the Company has made any payment of interest on or principal of any of such Securities because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the funds or Government Obligations held by the Trustee.

ARTICLE 11

REDEMPTION OF SECURITIES

Section 11.01. Notice of Redemption; Partial Redemptions. Notice of redemption to the Holders of Securities of any Series to be redeemed as a whole or in part at the option of the Company shall be given by giving notice of such redemption as provided in Section 15.04, at least 30 days and not more than 60 days prior to the date fixed for redemption to such Holders of Securities of such Series. Failure to give notice by mail to the Holder of any Security of a Series designated for redemption as a whole or in part, or any defect in such notice, shall not affect the validity of the proceedings for the redemption of any other Security of such Series.

The notice of redemption to each such Holder shall identify the Securities to be redeemed (including "CUSIP" or "ISIN" numbers, if any and that no representation is made as to the correctness or accuracy of the CUSIP or ISIN numbers, if any, listed in such notice or printed on the Securities), the paragraph of the Securities and/or Section of this Indenture pursuant to which the Securities called for redemption are being redeemed, specify the date fixed for redemption, the redemption price (or manner of calculation if not then known), each Place of Payment, that payment will be made upon presentation and surrender of such Securities, that such redemption is pursuant to the mandatory or optional sinking fund, or both, if such be the case, that interest accrued to the date fixed for redemption will be paid as specified in such notice and that unless the Company defaults on and after said date interest thereon or on the portions thereof to be redeemed will cease to accrue, the conversion rate or price, the date on which the right to convert the Securities to be redeemed will terminate and each place where such Securities may be surrendered for conversion, if applicable, and that, if less than all of the Outstanding Securities of a Series are to be redeemed, the identification and principal amount of the Securities to be redeemed. If less than all of the Securities of any Series are to be redeemed, the notice of redemption shall specify the numbers of the Securities of such Series to be redeemed. In case any Security of a Series is to be redeemed in part, the notice of redemption shall state the portion of the principal amount thereof to be redeemed and shall state that on and after the date fixed for redemption, upon surrender of such Security, a new Security or Securities of such Series in principal amount equal to the unredeemed portion thereof will be issued.

The notice of redemption of Securities of any Series to be redeemed shall be given by the Company or, upon direction by the Company pursuant to a Company Order, delivered to the Trustee at least 45 days prior to the redemption date (unless a shorter period shall be satisfactory to the Trustee), requesting that the Trustee give such notice together with the notice to be given setting forth the information to be stated therein as provided in this Section 11.01 in the name and at the expense of the Company. If the redemption price is not known at the time redemption notice is to be given, the actual redemption price calculated as described in the terms of the Securities will be set forth in an Officers' Certificate delivered to the Trustee no later than two Business Days prior to the redemption date.

Not later than 9:00 a.m., New York City time, on the redemption date specified in the notice of redemption given as provided in this Section 11.01, the Company will have on deposit with the Trustee or with one or more paying agents (or, if the Company is acting as its own Paying Agent, set aside, segregate and hold in trust as provided in Section 3.04) an amount of money sufficient to redeem on the redemption date all the Securities of such Series so called for redemption at the appropriate redemption price, together with accrued interest to the date fixed for redemption. If any Security to be redeemed is converted into Common Stock or Preferred Stock, any money deposited with the Trustee or with any Paying Agent or so segregated and held in trust for the redemption of such Security shall (subject to any right of the Holder of such Security or any predecessor Security to receive interest as provided in the last paragraph of Section 2.07) be paid to the Company upon direction by the Company pursuant to a Company Order or, if then held by the Company, shall be discharged from such trust. If less than all the Outstanding Securities of a Series are to be redeemed, the Company will deliver to the Trustee at least 60 days prior to the date fixed for redemption an Officers' Certificate stating the aggregate principal amount of Securities to be redeemed, unless a shorter period shall be satisfactory to the Trustee.

If less than all the Securities of a Series are to be redeemed, and the Securities are not held in global form pursuant to Section 2.14, the Trustee shall select, in such manner as it shall deem appropriate and fair, Securities of such Series to be redeemed in whole or in part. Securities may be redeemed in part in multiples equal to the

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minimum authorized denomination for Securities of such Series. If less than all the Securities of a Series are to be redeemed, and the Securities are held in global form pursuant to Section 2.14, the Securities to be redeemed shall be selected pursuant to Applicable Procedures. The Trustee shall promptly notify the Company in writing of the Securities of such Series selected for redemption and, in the case of any Securities of such Series selected for partial redemption, the principal amount thereof to be redeemed. For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities of any Series shall relate, in the case of any Security redeemed or to be redeemed only in part, to the portion of the principal amount of such Security which has been or is to be redeemed. If any Security to be redeemed in part is converted in part before termination of the conversion right with respect to the portion of the Security so selected, the converted portion of such Security shall be deemed (so far as may be) to be the portion selected for redemption. Securities (or portions thereof) which have been converted during a selection of Securities to be redeemed shall be treated by the Trustee as Outstanding for the purpose of such selection. In any case where more than one Security is registered in the same name, the Trustee in its discretion may treat the aggregate principal amount so registered as if it were represented by one Security.

Section 11.02. Payment of Securities Called for Redemption. If notice of redemption has been given as above provided, the Securities or portions of Securities specified in such notice shall become due and payable on the date and at the place stated in such notice at the applicable redemption price, together with interest accrued to the date fixed for redemption, and on and after said date (unless the Company shall default in the payment of such Securities at the redemption price, together with interest accrued to said date) interest on the Securities or portions of Securities so called for redemption shall cease to accrue and, except as provided in Sections 6.05 and 10.04, such Securities shall cease from and after the date fixed for redemption to be entitled to any benefit or security under this Indenture, and the Holders thereof shall have no right in respect of such Securities except the right to receive the redemption price and unpaid interest to the date fixed for redemption. On presentation and surrender of such Securities at a Place of Payment specified in said notice, such Securities or the specified portions thereof shall be paid and redeemed by the Company at the applicable redemption price, together with interest accrued thereon to the date fixed for redemption; provided that any semiannual payment of interest on Securities becoming due on the date fixed for redemption shall be payable to the Holders of such Securities registered as such on the relevant record date subject to the terms and provisions of Section 2.03.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal shall, until paid or duly provided for, bear interest from the date fixed for redemption at the rate of interest borne by the Security.

Upon presentation of any Security redeemed in part only, the Company shall execute and the Trustee shall authenticate and deliver (or transfer by book entry) to or on the order of the Holder thereof, at the expense of the Company, a new Security or Securities of authorized denominations, in principal amount equal to the unredeemed portion of the Security so presented.

Section 11.03. Exclusion of Certain Securities from Eligibility for Selection for Redemption. Securities other than global Securities shall be excluded from eligibility for selection for redemption if they are identified by registration and certificate number in a written statement signed by an authorized officer of the Company and delivered to the Trustee at least 40 days prior to the last date on which notice of redemption may be given as being owned of record and beneficially by, and not pledged or hypothecated by, either (a) the Company or (b) an entity specifically identified in such written statement directly or indirectly controlling or controlled by or under direct or indirect common control with the Company.

Section 11.04. Repayment at the Option of the Holders. Securities of any Series which are repayable at the option of the Holders thereof before their stated maturity shall be repaid in accordance with the terms of the Securities of such Series. The repayment of any principal amount of Securities pursuant to such option of the Holder to require repayment of Securities before their stated maturity, for purposes of Section 10.01, shall not operate as a payment, redemption or satisfaction of the indebtedness represented by such Securities unless and until the Company, at its option, shall deliver or surrender the same to the Trustee with a directive that such Securities be cancelled.

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ARTICLE 12

HOLDERS' MEETINGS

Section 12.01. Purposes of Meetings. A meeting of Holders of Securities of any or all Series may be called at any time and from time to time pursuant to the provisions of this Article 12 for any of the following purposes:

- (a) to give any notice to the Company or the Trustee for the Securities of such Series, or to give any directions to the Trustee for such Series, or to consent to the waiving of any default hereunder and its consequences, or to take any other action authorized to be taken by Holders pursuant to any of the provisions of Article 5;
- (b) to remove the Trustee for such Series and nominate a successor trustee pursuant to the provisions of Article 6;
- (c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 8.02; or

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

Section 12.02. Call of Meetings by Trustee. The Trustee for the Securities of any Series may at any time call a meeting of Holders of Securities of such Series to take any action specified in Section 12.01, to be held at such time and at such place in New York, New York, or such other city within the United States of America in which there is a Place of Payment as the Trustee for such Series shall determine. Notice of every meeting of the Holders of Securities of any Series, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given to Holders of Securities of such Series in the manner and to the extent provided in Section 15.04. Such notice shall be given not less than 20 nor more than 90 days prior to the date fixed for the meeting.

Section 12.03. Call of Meetings by Company or Holders. In case at any time the Company, pursuant to a Company Board Resolution or the Holders of not less than 10% in aggregate principal amount of the Outstanding Securities of any or all Series, as the case may be, shall have requested the Trustee for such Series to call a meeting of Holders of Securities of any or all Series, as the case may be, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee for such Series shall not have given the notice of such meeting within 20 days after receipt of such request, then the Company or such Holders may determine the time and the place in New York, New York, or such other city within the United States of America in which there is a Place of Payment for such meeting and may call such meeting to take any action authorized in Section 12.01, by giving notice thereof as provided in Section 12.02.

Section 12.04. Qualifications for Voting. To be entitled to vote at any meeting of Holders, a Person shall be (a) a Holder of one or more Securities with respect to which such meeting is being held or (b) a Person appointed by an instrument in writing as proxy by such Holder. The only Persons who shall be entitled to be present or to speak at any meeting of Holders shall be the Persons entitled to vote at such meeting and their counsel and any representatives of the Trustee for the Securities of the Series with respect to which such meeting is being held and its counsel and any representatives of the Company and its counsel.

Section 12.05. Regulations. Notwithstanding any other provisions of this Indenture, the Trustee for the Securities of any Series may make such reasonable regulations as it may deem advisable for any meeting of Holders of the Securities of such Series, in regard to proof of the holding of Securities of such Series and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Holders of the Securities of such Series as provided in Section 12.03, in which case the Company or the Holders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by majority vote of the meeting.

Subject to Section 7.04, at any meeting each Holder of Securities with respect to which such meeting is being held or proxy therefore shall be entitled to one vote for each \$1,000 principal amount (in the case of the Discount Securities, such principal amount to be determined as provided in Section 15.11) of Securities held or represented by such Holder. However, no vote shall be cast or counted at any meeting in respect of any such Security challenged as not Outstanding and ruled by the chairman of the meeting to be not Outstanding. The chairman of the meeting shall have no right to vote other than by virtue of the Securities of such Series held by him or instruments in writing aforesaid duly designating him as the Person to vote on behalf of other Holders of such Series. At any meeting of Holders, the presence of Persons holding or representing Securities with respect to which such meeting is being held in an aggregate principal amount sufficient to take action on the business for the transaction of which such meeting was called shall constitute a quorum, but, if less than a quorum is present, the Persons holding or representing a majority in aggregate principal amount of such Securities represented at the meeting may adjourn such meeting with the same effect, for all intents and purposes, as though a quorum had been present. Any meeting of Holders of Securities with respect to which a meeting was duly called pursuant to the provisions of Section 12.02 or Section 12.03 may be adjourned from time to time by a majority of such Holders present, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

Section 12.06. Voting. The vote upon any resolution submitted to any meeting of Holders of Securities with respect to which such meeting is being held shall be by written ballots on which shall be subscribed the signatures of such Holders or of their representatives by proxy and the identifying number or numbers of the Securities held or represented by them. The chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Holders shall be prepared by the secretary of the meeting and there shall be attached to such record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that such notice was given in the manner and to the extent provided in Section 15.04. The record shall show the identifying numbers of the Securities voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee.

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

Section 12.07. No Delay of Rights by Meeting. Nothing in this Article 12 shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Holders or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Holders under any of the provisions of this Indenture or of the Securities of any Series.

ARTICLE 13

SECURITY

If so provided pursuant to Section 2.03 with respect to the Securities of any Series, the Securities of such Series may be secured by such property, assets or other collateral as may be specified in or pursuant to Section 2.03. Any and all terms and provisions applicable to the security for the Securities of such Series shall also be provided in or pursuant to Section 2.03, which may include provisions for the execution and delivery of such security agreements, pledge agreements, collateral agreements and other similar or related agreements as the Company may elect and which may provide for the Trustee to act as

comply with Sections 314(b), 314(c) and 314(d) of the Trust Indenture Act, in each case in respect of any secured Securities that may be Outstanding hereunder from time to time.

ARTICLE 14 SUBORDINATION

Section 14.01. Securities Subordinated to Senior Indebtedness. The Company covenants and agrees, and each Holder of Subordinated Securities, by its acceptance thereof, likewise covenants and agrees, that the indebtedness evidenced by the Subordinated Securities and the payment of the principal of (and premium, if any) and interest on each of the Subordinated Securities is hereby expressly subordinated, to the extent and in the manner hereinafter set forth, in right of payment to the prior payment in full of Senior Indebtedness.

Anything in this Indenture or in the Subordinated Securities of any Series to the contrary notwithstanding, the indebtedness evidenced by the Subordinated Securities shall be subordinate and junior in right of payment, to the extent and in the manner hereinafter set forth, to all Senior Indebtedness:

(a) In the event of any insolvency or bankruptcy proceedings, and any receivership, liquidation, reorganization, arrangement or other similar proceedings in connection therewith, relative to the Company or to its property, and in the event of any proceedings for voluntary liquidation, dissolution or other winding-up of the Company, whether or not involving insolvency or bankruptcy, then the holders of Senior Indebtedness shall be entitled to receive payment in full of all principal, premium and interest on, or other amounts in respect of, all Senior Indebtedness before the Holders of the Subordinated Securities are entitled to receive any payment on account of principal, premium, if any, or interest upon the Subordinated Securities, and to that end (but subject to the power of a court of competent jurisdiction to make other equitable provisions reflecting the rights conferred in the Subordinated Securities upon Senior Indebtedness and the Holders thereof with respect to the subordinated indebtedness represented by the Subordinated Securities and the Holders hereof by a lawful plan of reorganization under applicable bankruptcy law) the holders of Senior Indebtedness shall be entitled to receive for application in payment thereof any payment or distribution of any kind or character, whether in cash or property or securities, which may be payable or deliverable in any such proceedings in respect of the Subordinated Securities after giving effect to any concurrent payment or distribution in respect of such Senior Indebtedness, except for any payment or distribution of (i) securities which are subordinate and junior in right of payment to the payment of all Senior Indebtedness then outstanding and (ii) funds from a defeasance trust created pursuant to this Indenture (“**Exempted Distributions**”). If after the Company has made such payments with respect to Senior Indebtedness, (i) there are amounts available for payment on the Subordinated Securities (“**Excess Proceeds**”) and (ii) at such time, any creditors in respect of Other Company Obligations have not received their full payments, then the Company shall first use such Excess Proceeds to pay in full all Other Company Obligations before making any payment of principal, premium, if any, or interest on the Subordinated Securities of any Series;

(b) In the event that the Subordinated Securities of any Series are declared or otherwise become due and payable before their expressed maturity because of the occurrence of certain Events of Default hereunder (under circumstances when the provisions of the foregoing clause (a) or the following clause (c) shall not be applicable), then the holders of Senior Indebtedness outstanding at the time such Subordinated Securities so become due and payable because of such occurrence of an Event of Default hereunder shall, so long as such declaration has not been rescinded and annulled pursuant to Section 5.01, be entitled to receive payment in full of all principal of, and premium and interest on or other amounts in respect of, all such Senior Indebtedness before the Holders of such Subordinated Securities are entitled to receive any payment on account of principal of, premium, if any, or interest on, such Subordinated Securities; provided, however, nothing herein shall prevent the Holders of Subordinated Securities from seeking any remedy allowed at law or at equity so long as any judgment or decree obtained thereby makes provision for enforcing this clause; and

(c) In the event that any default shall occur and be continuing, in each case, with respect to any Senior Indebtedness permitting the holders of such Senior Indebtedness to accelerate the maturity thereof, if either

(i) written notice of such default shall have been received by the Company and the Trustee, provided that judicial proceedings shall be commenced in respect of such default within 180 days in the case of a default in payment of principal, premium, if any, or interest and within 90 days in the case of any other default after the giving of such notice, and provided further that only one such notice shall be given pursuant to this Section 14.01(c) in any twelve month period, or

(ii) judicial proceedings shall be pending in respect of such default,

then the Holders of the Subordinated Securities and the Trustee for the benefit of the Holders shall not be entitled to receive any payment on account of principal thereof, or premium, if any, or interest thereon (including any such payment which would cause such default) unless payment in full of all principal of, and premium and interest on, or other amounts in respect of, such Senior Indebtedness shall have been made or provided for unless and until such default shall have been cured or waived or shall have ceased to exist. The Trustee, forthwith upon receipt of any notice received by it pursuant to this Section 14.01(c), shall, as soon as practicable, send a notice thereof to each Holder of Subordinated Securities at the time outstanding as the names and addresses of such Holders appear on the Security register. In case despite the foregoing provisions, any payment or distribution other than Exempted Distributions shall, in any such event, be paid or delivered to any Holder of the Subordinated Securities or to the Trustee for its benefit before all Senior Indebtedness shall have been paid in full, such payment or distribution shall be held in trust for and so paid and delivered to the holders of Senior Indebtedness (or their duly authorized representatives) until all Senior Indebtedness shall have been paid in full.

The Company shall give written notice to the Trustee within five days after the occurrence of any insolvency, bankruptcy, receivership, liquidation, reorganization, arrangement or similar proceeding of the Company or any voluntary liquidation, dissolution or winding up proceeding within the meaning of this Section 14.01. Upon any payment or distribution of assets of the Company referred to in this Article 14, the Trustee, subject to the provisions of Section 315(a) through 315(b) of the Trust Indenture Act, and the Holders of the Subordinated Securities shall be entitled to rely upon a certificate of the trustee in bankruptcy, receiver, assignee for the benefit of creditors or other liquidating agent making such payment or distribution, delivered to the Trustee or

to the Holders of the Subordinated Securities, for the purpose of ascertaining the persons entitled to participate in such payment or distribution, the holders of Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article 14.

The Trustee shall be entitled to conclusively rely on the delivery to it of a written notice by a person representing (as evidenced by such holder to the satisfaction of the Trustee) itself to be a holder of Senior Indebtedness or Other Company Obligations (or a trustee or agent on behalf of such holder similarly as evidenced to the satisfaction of the Trustee) to establish that such notice has been given by a holder of Senior Indebtedness or Other Company Obligations (or a trustee or agent on behalf of any such holder). In the event that the Trustee determines, in good faith, that further evidence is required with respect to the right of any person as a holder of Senior Indebtedness or Other Company Obligations to participate in any payment or distribution pursuant to this Section 14.01, the Trustee may request such person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Indebtedness or Other Company Obligations held by such person, as to the extent to which such person is entitled to participate in such payment or distribution, and as to other facts pertinent to the rights of such person under this Section 14.01, and if such evidence is not furnished, the Trustee may defer any payment or distribution to such person pending judicial determination as to the right of such person to receive such payment or distribution.

In the event that, notwithstanding the foregoing, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, including any such payment or distribution which may be payable or deliverable by reason of the payment of any other indebtedness of the Company being subordinate to the payment of the Subordinated Securities, shall be received by the Trustee or Holders of the Subordinated Securities which, in accordance with the terms of this Article 14 should be payable to the holders of Senior Indebtedness or Other Company Obligations and if such fact shall, at or prior to the time of such payment or distribution, have been actually known by the Trustee or, as the case may be such Holder, then upon such actual

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knowledge, such payment or distribution shall be paid over by the Trustee or such Holders, as the case may be, to the holders of such Senior Indebtedness or Other Company Obligations (or the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee, agent or other Person making payment of assets of the Company).

Section 14.02. Subrogation. Subject to the payment in full of all Senior Indebtedness or Other Company Obligations to which the indebtedness evidenced by the Subordinated Securities is in the circumstances subordinated as provided in Section 14.01, the Holders of the Subordinated Securities shall be subrogated to the rights of the holders of such Senior Indebtedness or Other Company Obligations to receive payments or distributions of cash, property or securities of the Company applicable to such Senior Indebtedness or Other Company Obligations until all amounts owing on the Subordinated Securities shall be paid in full. As between the Company, its creditors other than holders of such Senior Indebtedness or Other Company Obligations, and the Holders of the Subordinated Securities, no such payment or distribution made to the holders of such Senior Indebtedness or Other Company Obligations by virtue of this Article 14 which otherwise would have been made to the Holders of the Subordinated Securities shall be deemed to be a payment by the Company on account of such Senior Indebtedness or Other Company Obligations, it being understood that the provisions of this Article 14 are and are intended solely for the purpose of defining the relative rights of the Holders of the Subordinated Securities on the one hand, and the holders of the Senior Indebtedness, and Other Company Obligations on the other hand and, in the case of Section 14.10, the holders of other unsecured subordinated indebtedness.

Section 14.03. Obligations of the Company Unconditional. Nothing contained in this Article 14 or elsewhere in this Indenture or in the Subordinated Securities,

(a) is intended to or shall impair as between its creditors other than the holders of Senior Indebtedness or Other Company Obligations and the Holders of the Subordinated Securities, the obligation of the Company, which is absolute and unconditional, to pay to the Holders of the Subordinated Securities the principal of (and premium, if any) and interest on the Subordinated Securities as and when the same shall become due and payable in accordance with their terms,

(b) is intended to or shall affect the relative rights of the Holders of the Subordinated Securities and creditors of the Company other than the holders of Senior Indebtedness or Other Company Obligations, or

(c) prevents the Trustee or the Holder of any Subordinated Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article 14 of the holders of Senior Indebtedness or Other Company Obligations in respect of cash, property or securities of the Company received upon the exercise of any such remedy.

Upon any payment or distribution of assets of the Company referred to in this Article 14, the Trustee and the Holders of the Subordinated Securities shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which any such dissolution, winding up, liquidation, bankruptcy, insolvency or reorganization proceeding affecting the affairs of the Company is pending or upon a certificate of the trustee in bankruptcy, receiver, assignee for the benefit of creditors, liquidating trustee or agent or other person making any payment or distribution, delivered to the Trustee or to the Holders of the Subordinated Securities, for the purpose of ascertaining the persons entitled to participate in such payment or distribution, the holders of Senior Indebtedness, and other indebtedness of the Company the amount thereof or payable thereon, the amount paid or distributed thereon and all other facts pertinent thereto or to this Article 14.

Section 14.04. Rights of Holders Not Impaired. Nothing contained in this Article 14 or elsewhere in this Indenture, or in any of the Subordinated Securities, shall (a) affect the obligation of the Company to make, or prevent the Company from making, payment of the principal of (or premium, if any), or interest on, the Subordinated Securities in accordance with the provisions hereof and thereof, except as otherwise provided in this Article 14; (b) affect the relative rights of Holders of the Subordinated Securities and creditors of the Company other than the holders of Senior Indebtedness; (c) prevent the Holder of any Subordinated Security or the Trustee from exercising all remedies otherwise permitted by applicable law upon default thereunder, subject to the rights, if any,

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under this Article 14 of the holders of Senior Indebtedness in respect of cash, property or securities of the Company received upon the exercise of such remedy; or (d) prevent the application by the Trustee or any Paying Agent of any moneys deposited with it hereunder to the payment of or on account of the

principal of, or premium, if any, or interest on the Subordinated Securities or prevent the receipt by the Trustee or any Paying Agent of such moneys, if, prior to the third Business Day of such deposit, the Trustee or such Paying Agent did not have written notice of any event prohibition the making of such deposit by the Company.

Section 14.05. Effectuation of Subordination by Trustee. Each Holder of Subordinated Securities, by its acceptance thereof, authorizes and directs the Trustee on its behalf, subject to the terms hereof, to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article 14 and appoints the Trustee as its attorney-in-fact for any and all such purposes.

Section 14.06. Knowledge of Trustee. Notwithstanding the provisions of this Article 14 or any other provisions of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts which would prohibit the making of any payment of monies to or by the Trustee, or the taking of any other action by the Trustee, unless and until a Responsible Officer of the Trustee shall have received written notice thereof from the Company, any Holder of the Subordinated Securities, any paying agent of the Company or the holder or representative of any class of Senior Indebtedness.

Section 14.07. Trustee's Relation to Senior Indebtedness. Except as otherwise provided in the Trust Indenture Act, the Trustee shall be entitled to all the rights set forth in this Article 14 with respect to any Senior Indebtedness or Other Company Obligations at the time held by it, to the same extent as any other holder of Senior Indebtedness, and nothing in this Indenture shall deprive the Trustee of any of its rights as such holder. Notwithstanding anything in this Indenture or in the Subordinated Securities, nothing in this Article 14 shall apply to or limit claims of or payment to the Trustee under this Indenture.

With respect to holders of Senior Indebtedness and Other Company Obligations, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Article 14, and no implied covenants or obligations with respect to the holders of Senior Indebtedness and Other Company Obligations shall be read into this Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness and Other Company Obligations and the Trustee shall not be liable to any holder of Senior Indebtedness or Other Company Obligations if it shall pay over or deliver to Holders, the Company or any other Person monies or assets to which any holder of Senior Indebtedness or Other Company Obligations shall be entitled by virtue of this Article 14 or otherwise.

No recourse may be taken with respect to the obligations of the Company or the Trustee against the Trustee in its individual capacity and the Trustee shall have no liability or responsibility for the action or inaction of any trustee in connection with the Senior Indebtedness or otherwise any liability or responsibility for the Senior Indebtedness or Other Company Obligations.

Section 14.08. Rights of Holders of Senior Indebtedness Not Impaired. No right of any present or future holder of any Senior Indebtedness or Other Company Obligations to enforce the subordination herein shall at any time or in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any non-compliance by the Company with the terms, provisions or covenants of this Indenture, regardless of any knowledge thereof any such holder may have or be otherwise charged with.

Section 14.09. No Waiver of Default or Event of Default. The failure to make a payment pursuant to the Subordinated Securities by reason of any provision in this Article 14 shall not be construed as preventing the occurrence of a default or any Event of Default.

Section 14.10. Securities to Rank At Least Pari Passu with All Other Unsecured Subordinated Indebtedness. Subject to the provisions of this Section and to any provisions established or determined with respect to Subordinated Securities of any Series pursuant to Section 2.03, the Subordinated Securities shall rank at least *pari passu* in right of payment with all other unsecured subordinated indebtedness of the Company.

ARTICLE 15

MISCELLANEOUS PROVISIONS

Section 15.01. Incorporators, Stockholders, Officers and Directors of Company Exempt from Individual Liability. No recourse under or upon any obligation, covenant or agreement contained in this Indenture, in any Security, or because of any indebtedness evidenced thereby, shall be had against any incorporator, as such or against any past, present or future stockholder, officer or director, as such, of the Company or of any predecessor or successor to the Company, either directly or through the Company or any such predecessor or successor, under any rule of law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise, all such liability being expressly waived and released by the acceptance of the Securities by the Holders thereof and as part of the consideration for the issue of the Securities, it being expressly understood that, without limitation to the foregoing, this Indenture and the Securities and the obligations created hereunder and thereunder are solely corporate, limited liability company, partnership, limited partnership or entity obligations, as the case may be, of the Company and that no such personal liability whatever shall attach to, or is or shall be incurred by, any past, present or future stockholder, incorporator, employee, officer or director, as such, of the Company or any of its respective predecessors or successors, or any of them, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Indenture or in any Security or implied herefrom or therefrom and that any and all such personal liability of every type and nature, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such past, present or future stockholder, incorporator, employee, officer or director, as such, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Indenture or in any Security or implied herefrom or therefrom, are hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issuance of the Securities. As used in this Section 15.01, all references to “**stockholders**” shall be deemed to mean, with respect to any Person, any past, present or future holder or owner of an equity interest in such Person, including owners or holders of capital stock, limited or general partnership interests and limited liability company interests.

Section 15.02. Provisions of Indenture for the Sole Benefit of Parties and Securityholders. Nothing in this Indenture or in any Security, expressed or implied, shall give or be construed to give to any Person, other than the parties hereto, any Paying Agent and their successors hereunder, the Holders of the Securities and the holders of Senior Indebtedness or Other Company Obligations with respect to any Series of Subordinated Securities any legal or equitable rights, remedies or claims under this Indenture or under any covenant or provision herein contained, all such covenants and provisions being for the sole benefit of the parties hereto and their successors and of the Holders of the Securities.

Section 15.03. Successors and Assigns of Company Bound by Indenture. All the covenants, stipulations, promises and agreements in this Indenture by or on behalf of the Company shall bind its successors and assigns, whether so expressed or not.

Section 15.04. Notices and Demands on Company, Trustee and Securityholders. Any notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Trustee, by the Holders of Securities to or on the Company may be given or served by being deposited postage prepaid, first-class mail or overnight air courier guaranteeing next day delivery (except as otherwise specifically provided herein) addressed (until another address of the Company is filed by the Company with the Trustee) to the Company at 1201 Network Centre Drive, Effingham, Illinois 62401, Attention: Corporate Secretary. Any Company Order or notice by the Company, or any notice, direction, request or demand by Securityholders to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if given or made at the Corporate Trust Office. Notice to the Trustee shall be effective only if such receipt is acknowledged. The Trustee shall have the right, but shall not be required, to rely upon and comply with instructions and directions sent by e-mail, facsimile and other similar unsecured electronic methods by persons believed by the Trustee to be authorized to give instructions and directions on behalf of the Company or any Person. The Trustee shall have no duty or obligation to verify or confirm that the Person who sent such instructions or directions is, in fact, a Person authorized to give instructions or directions on behalf of the Company; and the Trustee shall have no liability for any losses, liabilities, costs or expenses incurred or sustained by the Company as a result of such reliance upon or compliance with such instructions or directions.

The Company agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including, without limitation, the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Where this Indenture provides for notice to Holders of any event, (a) if any of the Securities affected by such event are Securities, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed by first-class mail, postage prepaid to such Registered Holders as their names and addresses appear in the Security register within the time prescribed. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver. In any case where notice to Holders is given by mail, neither the failure to mail such notice nor any defect in any notice so mailed to any particular Holder shall affect the sufficiency of such notice with respect to other Holders, and any notice which is mailed in the manner herein provided shall be conclusively presumed to have been duly given. Notwithstanding any other provision of this Indenture or any Security, where this Indenture or any Security provides for notice of any event (including any notice of redemption or repurchase) to a Holder of a global Security (whether by mail or otherwise), such notice shall be sufficiently given if given to the depository (or its designee) pursuant to the standing instructions from the depository or its designee, including by electronic mail in accordance with Applicable Procedures.

In the event that the suspension of or irregularities in regular mail service makes it impracticable to mail notice to the Company and the Securityholders when such notice is required to be given pursuant to any provision of this Indenture, then any manner of giving such notice as shall be satisfactory to the Trustee shall be deemed to be a sufficient giving of such notice.

Section 15.05. Officers' Certificates and Opinions of Counsel; Statements to Be Contained Therein. Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture, the Company shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent have been complied with, except that in the case of any such application or demand as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or demand, no additional certificate or opinion need be furnished.

Each certificate or opinion provided for in this Indenture and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Indenture shall include (a) a statement that the Person making such certificate or opinion has read such covenant or condition, (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based, (c) a statement that, in the opinion of such Person, such Person has made such examination or investigation as is necessary to enable such Person to express an informed opinion as to whether or not such covenant or condition has been complied with, and (d) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been complied with.

Any certificate, statement or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of or representations by counsel, unless such officer knows that the certificate or opinion or representations with respect to the matters upon which his certificate, statement or opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should know that the same are erroneous. Any certificate, statement or opinion of counsel may be based, insofar as it relates to factual matters, information with respect to which is in the possession of the Company, upon the certificate, statement or opinion of or representations by an officer or officers of the Company, unless such counsel knows that the certificate, statement or opinion or representations with respect to the matters upon which his certificate, statement or opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should know that the same are erroneous.

Any certificate, statement or opinion of an officer of the Company or of counsel may be based, insofar as it relates to accounting matters, upon a certificate or opinion of or representations by an accountant or firm of accountants in the employ of the Company, unless such officer or counsel, as the case may be, knows that the certificate or opinion or representations with respect to the accounting matters upon which his certificate, statement or opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should know that the same are erroneous.

Any certificate or opinion of any independent firm of public accountants filed with the Trustee shall contain a statement that such firm is independent.

Section 15.06. Payments Due on Saturdays, Sundays and Holidays. If the date of maturity of interest on or principal of the Securities of any Series or the date fixed for redemption or repayment of any such Security shall not be a Business Day, then payment of interest or principal need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue on amounts payable on such date for the period from and after such date to the next succeeding Business Day.

Section 15.07. Conflict of Any Provision of Indenture with Trust Indenture Act. If and to the extent that any provision of this Indenture limits, qualifies or conflicts with another provision included in this Indenture which is required to be included herein by any of Sections 310 to 317, inclusive, of the Trust Indenture Act, such required provision shall control.

Section 15.08. New York Law to Govern. This Indenture and each Security shall be deemed to be a contract under the laws of the State of New York, and for all purposes shall be construed in accordance with the laws of such State.

Section 15.09. Counterparts. This Indenture may be executed in any number of counterparts, each of which shall be an original; but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture and signature pages for all purposes.

Section 15.10. Effect of Headings. The Article and Section headings herein and the Table of Contents are for convenience of reference only and shall not affect the construction hereof.

Section 15.11. Determination of Principal Amount. In determining whether the Holders of the requisite principal amount of Outstanding Securities of any Series have given any request, demand, authorization, direction, notice, consent or waiver hereunder, whether a quorum is present at a meeting of Holders of Securities or whether sufficient funds are available for redemption or for any other purpose, the principal amount of an Discount Security that shall be deemed to be Outstanding for such purposes shall be the amount of the principal thereof that would be due and payable as of the date of such determination upon a declaration of acceleration of the maturity thereof pursuant to Section 5.01.

Section 15.12. Waiver. With respect to the Outstanding Securities of any Series, the Holders of not less than a majority in aggregate principal amount of the Securities of such Series at the time Outstanding may on behalf of the Holders of all the Securities of such Series (a) waive compliance by the Company with any restrictive provisions in this Indenture, and (b) waive any past default under this Indenture as provided in Section 5.10.

Section 15.13. Force Majeure. In no event shall the Trustee be responsible or liable, nor shall the Company be responsible or liable to the Trustee, for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, or interruptions, loss or malfunctions of utilities, communications or computer (software and hardware)

services, it being understood that the Trustee or the Company, as the case may be, shall use reasonable efforts which are consistent with accepted practices to resume performance as soon as practicable under the circumstances.

Section 15.14. Waiver of Jury Trial. THE COMPANY, THE TRUSTEE AND EACH HOLDER OF A SECURITY, BY ITS ACCEPTANCE THEREOF, HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SECURITIES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

[Remainder of Page Intentionally Left Blank]

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

MIDLAND STATES BANCORP, INC.

By: _____
Name:
Title:

[·], as Trustee

By: _____
Name:
Title:

[Signature page to Indenture]

BARACK FERRAZZANO KIRSCHBAUM & NAGELBERG LLP

200 WEST MADISON STREET, SUITE 3900
 CHICAGO, ILLINOIS 60606
 Telephone (312) 984-3100
 Facsimile (312) 984-3150

June 30, 2017

Midland States Bancorp, Inc.
 1201 Network Centre Drive
 Effingham, Illinois 62401

Re: Registration Statement on Form S-3 of Midland States Bancorp, Inc.

Ladies and Gentlemen:

This opinion is being rendered to you in connection with the filing by Midland States Bancorp, Inc., an Illinois corporation (the "*Company*"), with the Securities and Exchange Commission (the "*Commission*") of a registration statement on Form S-3 (the "*Registration Statement*"), pursuant to the Securities Act of 1933, as amended (the "*Act*"). The Registration Statement relates to (a) the registration and proposed issuance and sale by the Company from time to time pursuant to Rule 415 under the Act of up to an aggregate offering price of \$165,000,000.00 of shares of common stock, \$0.01 par value per share, of the Company (the "*Common Stock*"), shares of preferred stock, \$2.00 par value per share, of the Company (the "*Preferred Stock*"), the Company's debt securities, whether senior or subordinated (the "*Debt Securities*"), warrants to purchase Common Stock, Preferred Stock or Debt Securities (the "*Warrants*"), and units comprised of two or more of the Common Stock, the Preferred Stock, Debt Securities or Warrants in any combination (the "*Units*," and together with the Common Stock, the Preferred Stock, the Debt Securities, the Warrants and the Units, the "*Company Securities*"), and (b) the registration and proposed resale by the Richard E. Workman 2001 Trust (the "*Selling Shareholder*") from time to time pursuant to Rule 415 under the Act of up to 954,277 shares of Common Stock (the "*Selling Shareholder Shares*" and, together with the Company Securities, the "*Registered Securities*"). This opinion is being furnished in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Act.

We have examined such certificates, instruments and documents as we deemed necessary for purposes of the opinions hereafter expressed. In such examination, we have assumed the genuineness of all signatures, the proper execution of all documents submitted to us as originals, the conformity to the original documents of all documents submitted to us as copies and the authenticity of the originals of such copies. As to matters of fact, we have relied upon representations of officers of the Company.

The opinions set forth herein are subject to the following assumptions, qualifications and limitations being true and correct at or before the time of the delivery of any Registered Securities offered pursuant to the Registration Statement: (A) the Board, including any appropriate committee appointed thereby, and appropriate officers of the Company shall have (i) duly established the terms of any Preferred Stock, Debt Securities, Warrants or Units being offered (and in the case of the Units, any such Company Securities that are components thereof), (ii) duly authorized and taken any other necessary corporate or other action to approve the creation, if applicable, issuance and sale of the Company Securities and related matters, and (iii)

duly reserved for issuance any Company Securities consisting of Common Stock or Preferred Stock, and any Common Stock or Preferred Stock for or into which any other Company Securities are exercisable, exchangeable or convertible, and, in the case of all of (i) through (iii), such authorizations and actions shall remain in effect and unchanged at all times during which the Registered Securities are offered, sold or issued by the Company; (B) the definitive terms of each class and series, if applicable, of the Company Securities, and the terms of the issuance and sale of the Company Securities (i) shall have been duly established in accordance with all applicable law and the Company's Articles of Incorporation and By-Laws, any indenture, warrant agreement, unit agreement and any other relevant agreement relating to the terms and the offer and sale of the Company Securities (collectively, the "*Documents*"), and the authorizing resolutions of the Board, and (ii) shall not violate any applicable law or any Documents (subject to the further assumption that such Documents have not been amended from the date hereof in a manner that would affect the validity of any of the opinions rendered herein), or result in a default under or breach of any agreement or instrument binding upon the Company and so as to comply with any restriction imposed by any court or governmental body having jurisdiction over the Company; (C) any Document relating to the terms of the Company Securities (but excluding any Document relating to the terms of the Debt Securities) shall be governed by and construed in accordance with the internal laws of the State of Illinois; (D) any Document relating to the terms of the Debt Securities shall be governed by and construed in accordance with the internal laws of the State of New York; (E) upon issuance of any shares of Common Stock or Preferred Stock, including as a component of Units or upon exercise, conversion or exchange of other Company Securities, (i) the total number of shares of Common Stock or Preferred Stock issued and outstanding shall not exceed the total number of shares of Common Stock or Preferred Stock that the Company is then authorized to issue under its Articles of Incorporation, and (ii) the Company will receive consideration in an amount not less than the aggregate par value of such shares of Common Stock or Preferred Stock; (F) the Company Securities (including any Company Securities issuable upon exercise, conversion or exchange of other Company Securities and, in the case of the Units, the Company Securities that are components thereof), and any certificates representing the relevant Company Securities (including any Company Securities issuable upon exercise, conversion or exchange of other Company Securities and, in the case of the Units, the Company Securities that are components thereof), shall have been duly authenticated, executed, countersigned, registered and delivered upon payment of the agreed-upon legal consideration therefor and shall have been duly issued and sold in accordance with any relevant agreement, and, if applicable, duly executed and delivered by the Company and any other appropriate party; (G) each applicable Document and any other relevant agreement relating to the offer and sale of the Registered Securities shall have been duly authorized, executed and delivered by the Company and each other party thereto, and shall constitute a valid and binding obligation of each party thereto (other than the Company); (H) the Registration Statement, and any amendments thereto (including post-effective amendments), shall have been declared effective under the Act, and such effectiveness shall not have been terminated or rescinded; (I) a prospectus supplement, if required, shall have been prepared, delivered and filed in compliance with the Act and the applicable rules and regulations thereunder describing the Registered Securities offered thereby; (J) the Registered Securities shall have been issued and sold in compliance with applicable U.S.

federal and state securities laws and solely in the manner stated in the Registration Statement and any applicable prospectus supplement; and (K) in the case of an agreement or instrument pursuant to which any Company Securities are to be issued, there shall be no terms or provisions contained therein which would affect the validity of any of the opinions rendered herein.

Based upon the foregoing, and subject to the qualifications, assumptions and limitations set forth herein, it is our opinion that:

(1) the Common Stock to be issued and sold by the Company, when (a) duly issued and sold in accordance with the Registration Statement and applicable prospectus supplement and either (i) in accordance with the provisions of an applicable, valid and binding purchase agreement, underwriting agreement or other similar agreement or (ii) upon exercise of Warrants as contemplated by the Registration Statement and applicable prospectus supplement and (b) delivered to the purchaser or purchasers thereof against receipt by the Company of such lawful consideration therefor as the Board (or a duly authorized committee thereof or a duly authorized officer of the Company) may determine, will be validly issued, fully paid and nonassessable;

(2) the Selling Shareholder Shares are validly issued, fully paid and nonassessable;

(3) the Preferred Stock, when (a) duly issued and sold in accordance with the Registration Statement and applicable prospectus supplement and either (i) in accordance with the provisions of an applicable, valid and binding purchase agreement, underwriting agreement or other similar agreement or (ii) upon exercise of Warrants as contemplated by the Registration Statement and applicable prospectus supplement and (b) delivered to the purchaser or purchasers thereof against receipt by the Company of such lawful consideration therefor as the Board (or a duly authorized committee thereof or a duly authorized officer of the Company) may determine, will be validly issued, fully paid and nonassessable;

(4) the Debt Securities, when (a) duly executed, authenticated, issued and sold in accordance with the Registration Statement and applicable prospectus supplement and either (i) in accordance with the provisions of an applicable purchase agreement, underwriting agreement, indenture or other similar agreement or (ii) upon exercise of Warrants as contemplated by the Registration Statement and applicable prospectus supplement and (b) delivered to the purchaser or purchasers thereof against receipt by the Company of such lawful consideration therefor, if any, as the Board (or a duly authorized committee thereof or a duly authorized officer of the Company) may determine, will be binding obligations of the Company;

(5) the Warrants, when (a) duly executed, authenticated, issued and sold in accordance with the Registration Statement and applicable prospectus supplement and in accordance with the provisions of an applicable, valid and binding warrant agreement or other similar agreement and (b) delivered to the purchaser or purchasers thereof against receipt by the Company of such lawful consideration therefor, if any, as the Board (or a duly authorized

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committee thereof or a duly authorized officer of the Company) may determine, will be binding obligations of the Company;

(6) the Units, when (a) duly executed, authenticated, issued and sold in accordance with the Registration Statement and applicable prospectus supplement and in accordance with the provisions of any applicable, valid and binding unit agreement or other similar agreement and (b) delivered to the purchaser or purchasers thereof against receipt by the Company of such lawful consideration therefor as the Board (or a duly authorized committee thereof or a duly authorized officer of the Company) may determine, will be binding obligations of the Company, and any Common Stock or Preferred Stock that is a component of such Units will be validly issued, fully paid and nonassessable, and any Debt Securities or Warrants that are components of such Units will be binding obligations of the Company.

Our opinions set forth in the paragraphs above are subject to the following exceptions: (a) the effect of bankruptcy, insolvency, reorganization, fraudulent transfer, moratorium or other similar laws relating to or affecting the rights and remedies of creditors; and (b) the effect of general principles of equity, whether considered in a proceeding in equity or at law (including the possible unavailability of specific performance or injunctive relief), concepts of materiality, reasonableness, good faith and fair dealing, and the discretion of the court before which a proceeding is brought; and we express no opinion as to waivers of broadly or vaguely stated rights.

We express no opinion concerning the laws of any jurisdiction other than the Illinois Business Corporation Act of 1983, and, with respect to the opinion set forth in paragraph (4) above, the laws of the State of New York. We express no opinion as to the laws, rules or regulations of any other jurisdiction, including, without limitation, the federal laws of the United States of America or any state securities or blue sky laws.

We express no opinion with respect to any specific legal issues other than those explicitly addressed herein. We assume no obligation to update this opinion letter after the date that the Registration Statement is initially declared effective or otherwise advise you with respect to any facts or circumstances or changes in law that may occur or come to our attention after such date (even though the change may affect the legal conclusions stated in this opinion letter).

We hereby consent to the reference to our firm in the Registration Statement under the caption "Legal Matters" and to the inclusion of this opinion as an exhibit to the Registration Statement. In giving this consent, we do not admit that we are within the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission.

Very truly yours,

/s/ Barack Ferrazzano Kirschbaum &
Nagelberg LLP

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**Computation of Ratio of Earnings to Fixed Charges and
Ratio of Earnings to Fixed Charges and Preferred Stock Dividends**

(dollars in thousands)	Three Months Ended March 31, 2017	Year Ended December 31,				
		2016	2015	2014	2013	2012
Including Interest on Deposits						
Earnings:						
Net income before income taxes	\$ 11,473	\$ 50,431	\$ 35,415	\$ 15,467	\$ 20,528	\$ 18,499
Add — total fixed charges	4,569	16,781	13,696	20,390	16,539	19,548
Less — preferred stock dividends(a)	—	—	—	11,694	7,258	8,017
Total earnings	<u>\$ 16,042</u>	<u>\$ 67,212</u>	<u>\$ 49,111</u>	<u>\$ 24,163</u>	<u>\$ 29,809</u>	<u>\$ 30,030</u>
Fixed Charges:						
Total interest expense	\$ 4,378	\$ 15,995	\$ 12,889	\$ 8,543	\$ 9,069	\$ 11,271
Interest included in operating lease rental expense(b)	191	786	807	153	212	260
Preferred stock dividends(a)	—	—	—	11,694	7,258	8,017
Total fixed charges	<u>\$ 4,569</u>	<u>\$ 16,781</u>	<u>\$ 13,696</u>	<u>\$ 20,390</u>	<u>\$ 16,539</u>	<u>\$ 19,548</u>
Ratio of earnings to fixed charges and preferred stock dividends	3.51x	4.01x	3.59x	1.19x	1.80x	1.54x
Ratio of earnings to fixed charges	3.51x	4.01x	3.59x	2.78x	3.21x	2.60x
Excluding Interest on Deposits						
Earnings:						
Net income before taxes	\$ 11,473	\$ 50,431	\$ 35,415	\$ 15,467	\$ 20,528	\$ 18,499
Add — total fixed charges excluding interest on deposits	2,183	7,845	6,185	15,192	10,826	11,385
Less — preferred stock dividends(a)	—	—	—	11,694	7,258	8,017
Total earnings	<u>\$ 13,656</u>	<u>\$ 58,276</u>	<u>\$ 41,600</u>	<u>\$ 18,965</u>	<u>\$ 24,096</u>	<u>\$ 21,867</u>
Fixed Charges:						
Total interest expense	\$ 4,378	\$ 15,995	\$ 12,889	\$ 8,543	\$ 9,069	\$ 11,271
Less — interest expense on deposits	2,386	8,936	7,511	5,198	5,713	8,163
Interest included in operating lease rental expense(b)	191	786	807	153	212	260
Preferred stock dividends(a)	—	—	—	11,694	7,258	8,017
Total fixed charges excluding interest on deposits	<u>\$ 2,183</u>	<u>\$ 7,845</u>	<u>\$ 6,185</u>	<u>\$ 15,192</u>	<u>\$ 10,826</u>	<u>\$ 11,385</u>
Ratio of earnings to fixed charges and preferred stock dividends	6.26x	7.43x	6.73x	1.25x	2.23x	1.92x
Ratio of earnings to fixed charges	6.26x	7.43x	6.73x	5.42x	6.75x	6.49x

(a) The preferred stock dividend amounts have been grossed up to compute the pre-tax equivalent assuming a 35% tax rate.

(b) Interest included in operating lease rental expense is estimated as one-third of net rent expense under operating leases.

Consent of Independent Registered Public Accounting Firm

The Board of Directors
Midland States Bancorp, Inc.:

We consent to the use of our report dated March 10, 2017, with respect to the consolidated balance sheets of Midland States Bancorp, Inc. as of December 31, 2016 and 2015, and the related consolidated statements of income, comprehensive income, shareholders' equity, and cash flows, for each of the years in the three-year period ended December 31, 2016, incorporated herein by reference and to the reference to our firm under the heading "Experts" in the prospectus.

(signed) KPMG LLP

St. Louis, Missouri
June 28, 2017
