

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

FORM 8-K

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

Date of report (Date of earliest event reported): **August 22, 2022**

**Midland States Bancorp, Inc.**

(Exact Name of Registrant as Specified in Charter)

**Illinois**  
(State or Other Jurisdiction of  
Incorporation)

**001-35272**  
(Commission File Number)

**37-1233196**  
(IRS Employer Identification No.)

**1201 Network Centre Drive**  
**Effingham, Illinois 62401**  
(Address of Principal Executive Offices) (Zip Code)

Registrant's telephone number, including area code: **(217) 342-7321**

**N/A**  
(Former Name or Former Address, if Changed Since Last Report)

Securities registered pursuant to Section 12(b) of the Act:

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock, \$0.01 par value	MSBI	Nasdaq Global Select Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§ 230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§ 240.12b-2 of this chapter).

Emerging growth company

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

**Item 3.03. Material Modification to the Rights of Security Holders.**

On August 24, 2022, Midland States Bancorp, Inc. (the “Company”) completed its previously disclosed offering of 4,600,000 depositary shares (the “Depositary Shares”), each representing a 1/40th ownership interest in a share of the Company’s 7.750% Fixed-Rate Reset Non-Cumulative Perpetual Preferred Stock, Series A, par value \$2.00 per share (the “Series A Preferred Stock”), with a liquidation preference of \$25.00 per depositary share (equivalent to \$1,000 per share of Series A Preferred Stock).

In connection with the offering, on August 22, 2022, the Company filed a Statement of Resolution with the Secretary of State of the State of Illinois, creating a series of 115,000 shares of Series A Preferred Stock (the “Statement of Resolution”). Holders of the Depositary Shares will be entitled to all proportional rights and preferences of the Series A Preferred Stock represented thereby (including dividend, voting, redemption and liquidation rights).

With respect to the payment of dividends and distributions upon the Company’s liquidation, dissolution, or winding-up, the Series A Preferred Stock will rank (i) senior to the Company’s common stock and to any class or series of the Company’s capital stock it may issue in the future that is not expressly stated to be on parity with or senior to the Series A Preferred Stock with respect to such dividends and distributions; (ii) on parity with, or equally to, any class or series of the Company’s capital stock that the Company has issued and may issue in the future that is expressly stated to be on parity with the Series A Preferred Stock with respect to such dividends and distributions; and (iii) junior to any class or series of the Company’s capital stock that the Company may issue in the future that is expressly stated to be senior to the Series A Preferred Stock with respect to such dividends and distributions, if the issuance is approved by the holders of at least two-thirds of the outstanding shares of Series A Preferred Stock.

So long as any Series A Preferred Stock remains outstanding, unless full dividends for the most recently completed dividend period have been declared and paid (or declared and a sum sufficient for the payment thereof has been set aside) on all outstanding shares of Series A Preferred Stock, the Company may not, subject to certain exceptions, (i) declare, pay or set aside for payment any dividend or distribution on any shares of capital stock ranking junior to the Series A Preferred Stock as to dividend rights or upon liquidation, dissolution or winding-up of the Company; (ii) repurchase, redeem or otherwise acquire for consideration, directly or indirectly, any shares of capital stock ranking junior to the Series A Preferred Stock as to dividend rights or upon liquidation, dissolution or winding-up of the Company; or (iii) repurchase, redeem or otherwise acquire for consideration, directly or indirectly, any shares of capital stock ranking on parity with the Series A Preferred Stock, including the Series A Preferred Stock, as to dividend rights or upon liquidation, dissolution or winding-up of the Company.

The foregoing description of the Series A Preferred Stock is qualified in its entirety by reference to the full text of the Statement of Resolution, a copy of which is filed herewith as Exhibit 3.1 and is incorporated herein by reference.

In connection with the issuance of the Depositary Shares, the Company entered into a Deposit Agreement, dated August 24, 2022 (the “Deposit Agreement”), among the Company, Computershare Inc., Computershare Trust Company, N.A. and the holders from time to time of the receipts described therein (the “Depositary Receipts”). The Series A Preferred Stock represented by the Depositary Shares were deposited against the delivery of the Depositary Receipts pursuant to the Deposit Agreement.

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The foregoing description of the Deposit Agreement and the Depositary Receipts are qualified in their entirety by reference to the full text of the Deposit Agreement and the form of Depositary Receipt, copies of which are filed herewith as Exhibits 4.1 and 4.2, respectively, and are incorporated herein by reference.

**Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

On August 22, 2022, the Company filed the Statement of Resolution with the Secretary of State of the State of Illinois, amending the Company's articles of incorporation, which became effective upon filing. The Statement of Resolution creates the Series A Preferred Stock, consisting of 115,000 designated shares, out of the authorized and unissued shares of preferred stock of the Company, and provides for certain dividend, voting, redemption, liquidation and other rights.

The foregoing description of the Statement of Resolution is qualified in its entirety by reference to the full text thereof, a copy of which is filed herewith as Exhibit 3.1 and is incorporated herein by reference.

**Item 8.01. Other Events.**

In connection with the issuance of the Depositary Shares, Barack Ferrazzano Kirschbaum & Nagelberg LLP provided the Company with the legal opinion filed as Exhibit 5.1 hereto, which is incorporated herein by reference.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits.

<b><u>Exhibit No.</u></b>	<b><u>Description</u></b>
<a href="#">3.1</a>	<a href="#">Statement of Resolution Establishing Series of 7.750% Fixed-Rate Reset Non-Cumulative Perpetual Preferred Stock, Series A of Midland States Bancorp, Inc.</a>
<a href="#">4.1</a>	<a href="#">Deposit Agreement, dated as of August 24, 2022, by and among Midland States Bancorp, Inc., Computershare Inc., Computershare Trust Company, N.A. and the holders from time to time of the depositary receipts described therein.</a>
<a href="#">4.2</a>	<a href="#">Form of depositary receipt representing the Depositary Shares (included as Exhibit A to Exhibit 4.1 hereto).</a>
<a href="#">5.1</a>	<a href="#">Opinion of Barack Ferrazzano Kirschbaum &amp; Nagelberg LLP.</a>
<a href="#">23.1</a>	<a href="#">Consent of Barack Ferrazzano Kirschbaum &amp; Nagelberg LLP (included in Exhibit 5.1 hereto).</a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

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**SIGNATURES**

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

Date: August 24, 2022

MIDLAND STATES BANCORP, INC.

By: /s/ Douglas J. Tucker

Douglas J. Tucker

Senior Vice President and Corporate Counsel

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STATEMENT OF RESOLUTION ESTABLISHING SERIES  
OF  
7.750% FIXED-RATE RESET NON-CUMULATIVE PERPETUAL PREFERRED STOCK, SERIES A  
OF  
MIDLAND STATES BANCORP, INC.

Pursuant to and in accordance with Section 6.10 of the Illinois Business Corporation Act of 1983, the undersigned corporation made the following statement:

**ARTICLE 1**

The name of the corporation is Midland States Bancorp, Inc. (the “Corporation”).

**ARTICLE 2**

Pursuant to the authority vested in the board of directors of the Corporation (the “Board”) in accordance with the provisions of the Articles of Incorporation of the Corporation (the “Articles”), the following resolutions were adopted on August 17, 2022 creating a series of 115,000 shares of non-cumulative perpetual preferred stock designated as “Series A Preferred Stock”:

**RESOLVED**, that pursuant to the authority vested in the Board in accordance with the provisions of the Articles, a series of preferred stock of the Corporation is hereby created, such series to be known as Series A Preferred Stock, and that the designation and number of shares of such series, and the voting and other powers, preferences and relative, participating, optional or other rights of the shares of such series, and the qualifications, limitations and restrictions thereof are as follows:

1. **Definitions.** The following terms used herein shall be defined as set forth below:

“**Appropriate Federal Banking Agency**” means the “appropriate Federal banking agency” with respect to the Corporation as defined in Section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. Section 1813(q)), or any successor provision.

“**Board**” means the board of directors of the Corporation.

“**Business Day**” means any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions are authorized or required by law or regulation to close in the State of Illinois.

“**Bylaws**” means the Bylaws of the Corporation, as they may be amended or restated from time to time.

“**Calculation Agent**” means such bank or other entity (which may be the Corporation or an affiliate of the Corporation) as may be appointed by the Corporation to act as Calculation Agent for the Series A Preferred Stock, including any successor calculation agent duly appointed by the Corporation.

“**Articles of Incorporation**” means Articles of Incorporation of the Corporation, as amended by the Statement of Resolution, and as it may be amended or restated from time to time.

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

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“**Corporation**” means Midland States Bancorp, Inc.

“**First Reset Date**” means September 30, 2027.

“**Five-Year Treasury Rate**” means, for any Reset Period commencing on or after the First Reset Date, the average of the yields on actively traded U.S. treasury securities adjusted to constant maturity, for five-year maturities, for the five Business Days immediately preceding the Reset Dividend Determination Date for such Reset Period, appearing under the caption “Treasury Constant Maturities” in the most recently published statistical release designated H.15 Daily Update or any successor publication which is published by the Federal Reserve as of 5:00 p.m. (Eastern Time) as of such Reset Dividend Determination Date, as determined by the Calculation Agent in its sole discretion; *provided* that if no such calculation can be determined as described above, then: (i) if the Calculation Agent determines that the treasury rate has not been discontinued, then the Calculation Agent will use for such Reset Period a substitute base rate that it has determined is most comparable to the treasury rate; or (ii) if the Calculation Agent determines that the treasury rate has been discontinued, then the Calculation Agent will use for such Reset Period and each successive Reset Period a substitute or successor base rate that it has determined is most comparable to the treasury rate; *provided*, in the case of this clause (ii), that, if the Calculation Agent determines there is an industry-accepted successor base rate to the treasury rate, then the Calculation Agent shall use such successor base rate. If the Calculation Agent has determined a substitute or successor base rate in accordance with clause (ii), above, but no calculation with respect to such substitute or successor base rate can be determined as of any subsequent Reset Dividend Determination Date, then a new substitute or successor base rate shall be determined as set forth in clause (i) or clause (ii), above, as applicable, as if the previously-determined substitute or successor base rate was the treasury rate. If the Calculation Agent has determined a substitute or successor base rate, then the Calculation Agent will apply any technical, administrative or operational changes that the Corporation determines (including changes to the definitions of “Series A Dividend Period”, “Reset Period”, “Reset Date” and “Reset Dividend Determination Date”, timing and frequency of determining rates with respect to each Reset Period and making payments of dividends, rounding of amounts or tenors, and other administrative matters) for calculating such substitute or successor base rate in a manner that is consistent with market practice for such substitute or successor base rate, including any adjustment factor needed to make such substitute or successor base rate comparable to the treasury rate; *provided* that, if the Corporation decides that adoption of any portion of such market practice is not administratively feasible or if the Corporation determines that no market practice for use of the substitute or successor base rate exists, the Calculation Agent will apply any such changes for calculating such substitute or successor base rate in such other manner as the Corporation determines is reasonably necessary. The Five-Year Treasury Rate shall be determined by the Calculation Agent on the Reset Dividend Determination Date. If the Five-Year Treasury Rate for any Series A Dividend Period cannot be determined pursuant to the methods described in clauses (i) and (ii) above, the dividend rate for such Series A Dividend Period shall be the same as the dividend rate determined for the immediately preceding Series A Dividend Period.

“**Preferred Stock**” means any and all series of preferred stock of the Corporation, including the Series A Preferred Stock.

“**Reset Date**” means the First Reset Date and each date falling on the fifth anniversary of the preceding Reset Date, which in each case, shall not be adjusted for Business Days.

“**Reset Dividend Determination Date**” means, in respect of any Reset Period, the third Business Day immediately preceding the beginning of such Reset Period.

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“**Reset Period**” means the period from, and including, the First Reset Date to, but excluding, the next following Reset Date and thereafter each period from, and including, each Reset Date to, but excluding, the next following Reset Date.

“**Series A Preferred Stock**” shall have the meaning set forth in Section 2 of this Certificate of Designation.

“**Voting Preferred Stock**” means, with regard to any election or removal of a Preferred Stock Director (as defined in Section 7(b) below) or any other matter as to which the holders of Series A Preferred Stock are entitled to vote as specified in Section 7 of this Certificate of Designation, any and all other series of Preferred Stock (other than Series A Preferred Stock) that rank equally with Series A Preferred Stock as to the payment of dividends and upon which like voting rights have been conferred and are exercisable with respect to such matter.

2. **Designation and Number of Shares.** There is hereby created out of the authorized and unissued shares of Preferred Stock, a series of Preferred Stock designated as the “7.750% Fixed Rate Reset Non-Cumulative Perpetual Preferred Stock, Series A” (hereinafter called “**Series A Preferred Stock**”); the authorized number of shares that shall constitute such series shall be 115,000 shares, par value \$2.00 per share; and such shares shall have a liquidation preference of \$1,000 per share. The number of shares constituting the Series A Preferred Stock may be increased from time to time by resolution of the Board or a duly authorized committee of the Board in accordance with the Articles of Incorporation (as then in effect), the Bylaws (as then in effect), and applicable law up to the maximum number of shares of Preferred Stock authorized to be issued under the Articles of Incorporation (as then in effect) less all shares at the time authorized of any other series of Preferred Stock or decreased from time to time by a resolution of the Board or a duly authorized committee of the Board in accordance with the Articles of Incorporation (as then in effect), the Bylaws (as then in effect), and applicable law but not below the number of shares of Series A Preferred Stock then outstanding. Shares of Series A Preferred Stock shall be dated the date of issue, which date shall be referred to herein as the “original issue date.” Shares of outstanding Series A Preferred Stock that are redeemed, purchased, or otherwise acquired by the Corporation shall be cancelled and shall revert to authorized but unissued shares of the Preferred Stock, undesignated as to series. The Corporation shall have the authority to issue fractional shares of Series A Preferred Stock. Each share of Series A Preferred Stock shall be identical in all respects to every other share of Series A Preferred Stock.

3. **Ranking.** The shares of Series A Preferred Stock shall rank:

(a) senior, as to dividends and upon liquidation, dissolution, and winding-up of the Corporation, to the Common Stock and to any other class or series of capital stock of the Corporation now or hereafter authorized, issued, or outstanding that, by its terms, does not expressly provide that such class or series ranks *pari passu* with the Series A Preferred Stock or senior to the Series A Preferred Stock as to dividends and upon liquidation, dissolution, and winding-up of the Corporation, as the case may be (collectively, “**Series A Junior Securities**”);

(b) on a parity, as to dividends and upon liquidation, dissolution, and winding-up of the Corporation, with any class or series of capital stock of the Corporation now or hereafter authorized, issued, or outstanding that, by its terms, expressly provides that such class or series ranks *pari passu* with the Series A Preferred Stock as to dividends and upon liquidation, dissolution, and winding-up of the Corporation, as the case may be (collectively, “**Series A Parity Securities**”); and

(c) junior, as to dividends and upon liquidation, dissolution, and winding-up of the Corporation, to any other class or series of capital stock of the Corporation now or hereafter authorized, issued, or outstanding that, by its terms, expressly provides that such class or series ranks senior to the Series A Preferred Stock as to dividends and upon liquidation, dissolution, and winding-up of the Corporation, as the case may be.

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The Corporation may authorize and issue additional shares of Series A Junior Securities and Series A Parity Securities from time to time without the consent of the holders of the Series A Preferred Stock.

#### 4. Dividends.

(a) Holders of Series A Preferred Stock shall be entitled to receive, only when, as, and if declared by the Board or a duly authorized committee of the Board, on each Series A Dividend Payment Date (as defined below), out of assets legally available for the payment of dividends thereof, non-cumulative cash dividends based on the liquidation preference of the Series A Preferred Stock of \$1,000 per share. Dividends on each share of Series A Preferred Stock shall accrue at a rate equal to (i) 7.750% per annum on the liquidation preference of \$1,000 per share from the original issue date to, but excluding, the First Reset Date and (ii) from, and including, the First Reset Date, during each Reset Period, a rate per annum equal to the Five-Year Treasury Rate as of the most recent Reset Date, plus 4.713% on the liquidation preference of \$1,000 per share. If the Corporation issues additional shares of the Series A Preferred Stock after the original issue date, dividends on such shares may accrue from the original issue date for the initial issuance of shares of Series A Preferred Stock or any other date specified by the Board or a duly authorized committee of the Board at the time such additional shares are issued.

(b) If declared by the Board or a duly authorized committee of the Board, dividends will be payable on the Series A Preferred Stock quarterly in arrears on March 30, June 30, September 30 and December 30 of each year, beginning on December 30, 2022, each such day a “**Series A Dividend Payment Date**”; provided, however, that if any such Series A Dividend Payment Date is not a Business Day, then such date shall nevertheless be a Series A Dividend Payment Date but dividends on the Series A Preferred Stock shall be paid on the next succeeding Business Day (without interest or any other adjustment to the amount of dividends paid in respect of such delayed payment).

(c) Dividends will be payable to holders of record of Series A Preferred Stock as they appear on the Corporation’s stock register on the applicable record date, which shall be the 15th calendar day before the applicable Series A Dividend Payment Date, or such other record date, not less than 10 calendar days nor more than 30 calendar days before the applicable Series A Dividend Payment Date, as such record date (the “**Dividend Record Date**”) shall be fixed by the Board or a duly authorized committee of the Board. Any such day that is a Dividend Record Date shall be a Dividend Record Date whether or not such day is a Business Day.

(d) A “**Series A Dividend Period**” is the period from and including a Series A Dividend Payment Date to, but excluding, the next succeeding Series A Dividend Payment Date, except that the initial Series A Dividend Period will commence on and include the original issue date of Series A Preferred Stock and continue to but exclude December 30, 2022. Dividends payable on Series A Preferred Stock will be computed on the basis of a 360-day year consisting of twelve 30-day months. Dollar amounts resulting from the calculation will be rounded to the nearest cent, with one-half cent being rounded upward. Dividends on the Series A Preferred Stock will cease to accrue on the redemption date, if any, with respect to the Series A Preferred Stock redeemed, unless the Corporation defaults in the payment of the redemption price of the Series A Preferred Stock called for redemption.

(e) Dividends on the Series A Preferred Stock will not be cumulative and will not be mandatory. If the Board or a duly authorized committee of the Board does not declare a dividend, in full or otherwise, on the Series A Preferred Stock in respect of a Series A Dividend Period, then such unpaid dividends shall cease to accrue and shall not be payable on the applicable Series A Dividend Payment Date and shall not be cumulative, and the Corporation will have no obligation to pay (and the holders of the Series A Preferred Stock will have no right to receive) dividends accrued for such Series A Dividend Period after the Series A Dividend Payment Date for such Series A Dividend Period, whether or not the Board or a duly authorized committee of the Board declares a dividend for any future Series A Dividend Period with respect to the Series A Preferred Stock, the Common Stock, or any other class or series of the Corporation’s Preferred Stock. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend not declared.

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(f) Payments of cash for dividends will be delivered to holders or, if any interests in the Series A Preferred Stock are held through depositary shares, through the processes set by DTC.

(g) Notwithstanding any other provision hereof, dividends on the Series A Preferred Stock shall not be declared, paid, or set aside for payment to the extent such act would cause the Corporation to fail to comply with the laws and regulations applicable to it, including applicable capital adequacy rules of the Board of Governors of the Federal Reserve System (the “Federal Reserve”) or, as and if applicable, the capital adequacy rules or regulations of any Appropriate Federal Banking Agency.

(h) So long as any share of Series A Preferred Stock remains outstanding:

(i) no dividend shall be declared or paid or set aside for payment, and no distribution shall be declared or made or set aside for payment, on any Series A Junior Securities, other than (1) a dividend payable on Series A Junior Securities in the form of stock, warrants, options or other rights where the dividend stock or the stock issuable upon exercise of such warrants, options or other rights is the same stock as that on which the dividend is being paid or ranks equal or junior to that stock or is other Series A Junior Securities or (2) any dividend in connection with the implementation of a shareholders’ rights plan, or the issuance of rights, stock, or other property under any such plan, or the redemption or repurchase of any rights under any such plan;

(ii) no shares of Series A Junior Securities shall be repurchased, redeemed, or otherwise acquired for consideration by the Corporation, directly or indirectly, other than (1) as a result of a reclassification of Series A Junior Securities for or into other Series A Junior Securities, (2) the exchange or conversion of one share of Series A Junior Securities for or into another share of Series A Junior Securities, (3) through the use of the proceeds of a substantially contemporaneous sale of other shares of Series A Junior Securities, (4) purchases, redemptions, or other acquisitions of shares of Series A Junior Securities in connection with any employment contract, benefit plan, or other similar arrangement with or for the benefit of employees, officers, directors, or consultants, (5) purchases of shares of Series A Junior Securities pursuant to a contractually binding requirement to buy Series A Junior Securities existing prior to the most recently completed Series A Dividend Period, including under a contractually binding stock repurchase plan, (6) the purchase of fractional interests in shares of Series A Junior Securities pursuant to the conversion or exchange provisions of such stock or the security being converted or exchanged or (7) the acquisition by the Corporation or any of the Corporation’s subsidiaries of record ownership in Series A Junior Stock for the beneficial ownership of any other persons (other than for the beneficial ownership of the Corporation or any of the Corporation’s subsidiaries), including as trustees or custodians; nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Series A Junior Securities by the Corporation; and

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(iii) no shares of Series A Parity Securities shall be repurchased, redeemed, or otherwise acquired for consideration by the Corporation, directly or indirectly, other than (1) pursuant to pro rata offers to purchase all, or a pro rata portion, of the Series A Preferred Stock and such Series A Parity Securities, if any, (2) as a result of a reclassification of Series A Parity Securities for or into other Series A Parity Securities, (3) the exchange or conversion of one share of Series A Parity Securities or Series A Junior Securities for or into another share of Series A Parity Securities, (4) through the use of the proceeds of a substantially contemporaneous sale of other shares of Series A Parity Securities, (5) purchases of shares of Series A Parity Securities pursuant to a contractually binding requirement to buy Series A Parity Securities existing prior to the most recently completed Series A Dividend Period, including under a contractually binding stock repurchase plan, (6) the purchase of fractional interests in shares of Series A Parity Securities pursuant to the conversion or exchange provisions of such stock or the security being converted or exchanged or (7) the acquisition by the Corporation or any of the Corporation's subsidiaries of record ownership in Series A Parity Securities for the beneficial ownership of any other persons (other than for the beneficial ownership of the Corporation or any of the Corporation's subsidiaries), including as trustees or custodians; nor shall any monies be paid to or made available for a sinking fund for the redemption of any such securities by the Corporation;

unless, in each case, the full dividends for the most recently completed Series A Dividend Period on all outstanding shares of Series A Preferred Stock have been declared and paid (or declared and a sum sufficient for the payment thereof has been set aside). Nothing in sub-sections (h)(ii) or (h)(iii) of this Section 4 shall restrict the ability of the Corporation or any affiliate of the Corporation to engage in any market-making transactions or purchases in connection with the distribution of securities in the ordinary course of business.

(i) When dividends are not paid (or declared and a sum sufficient for payment thereof set aside) on any Series A Dividend Payment Date (or, in the case of Series A Parity Securities having dividend payment dates different from the Series A Dividend Payment Dates, on a dividend payment date falling within a Series A Dividend Period) in full upon the Series A Preferred Stock and any shares of Series A Parity Securities, all dividends declared on the Series A Preferred Stock and all such Series A Parity Securities and payable on such Series A Dividend Payment Date (or, in the case of Series A Parity Securities having dividend payment dates different from the Series A Dividend Payment Dates, on a dividend payment date falling within the Series A Dividend Period related to such Series A Dividend Payment Date) shall be declared pro rata so that the respective amounts of such dividends shall bear the same ratio to each other as all accrued but unpaid dividends per share on the Series A Preferred Stock and all Series A Parity Securities payable on such Series A Dividend Payment Date (or, in the case of Series A Parity Securities having dividend payment dates different from the Series A Dividend Payment Dates, on a dividend payment date falling within the Series A Dividend Period related to such Series A Dividend Payment Date) bear to each other.

(j) Subject to the foregoing, and not otherwise, dividends (payable in cash, securities, or otherwise), as may be determined by the Board or a duly authorized committee of the Board, may be declared and paid on the Common Stock and any other class or series of capital stock ranking equally with or junior to Series A Preferred Stock from time to time out of any assets legally available for such payment, and the holders of Series A Preferred Stock shall not be entitled to participate in any such dividend.

#### Section 5. Liquidation.

(a) Upon any voluntary or involuntary liquidation, dissolution, or winding-up of the Corporation, holders of Series A Preferred Stock shall be entitled to receive out of the assets of the Corporation available for distribution to shareholders, after satisfaction of liabilities and obligations to creditors, if any, and subject to the rights of holders of any securities then outstanding ranking senior to or on parity with Series A Preferred Stock with respect to distributions of assets upon the liquidation, dissolution or winding-up of the Corporation, before any distribution or payment out of the assets of the Corporation is made to holders of Common Stock or any Series A Junior Securities, a liquidating distribution in the amount of the liquidation preference of \$1,000 per share plus the per share amount of any declared and unpaid dividends on the Series A Preferred Stock prior to the payment of the liquidating distribution, without accumulation of any dividends that have not been declared prior to the payment of the liquidating distribution. After payment of the full amount of such liquidating distribution, the holders of the Series A Preferred Stock shall not be entitled to any further participation in any distribution of assets of the Corporation.

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(b) In any such liquidating distribution, if the assets of the Corporation are not sufficient to pay the liquidation preferences (as defined below) in full to all holders of Series A Preferred Stock and all holders of any Series A Parity Securities, the amounts paid to the holders of Series A Preferred Stock and to the holders of all Series A Parity Securities will be paid pro rata in accordance with the respective aggregate liquidation preferences owed to those holders. In any such distribution, the “liquidation preference” of any holder of Series A Preferred Stock or any Series A Parity Securities means the amount otherwise payable to such holder in such distribution (assuming no limitation on the Corporation’s assets available for such distribution), including any declared but unpaid dividends (and, in the case of any holder of stock other than the Series A Preferred Stock on which dividends accrue on a cumulative basis, an amount equal to any unpaid, accrued, cumulative dividends, whether or not declared, as applicable).

(c) If the liquidation preference has been paid in full to all holders of Series A Preferred Stock and any Series A Parity Securities, the holders of the Corporation’s Series A Junior Securities shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

(d) For purposes of this Section 5, neither the sale, conveyance, exchange, or transfer of all or substantially all of the assets or business of the Corporation for cash, securities, or other property, nor the merger or consolidation of the Corporation with any other entity, including a merger or consolidation in which the holders of Series A Preferred Stock receive cash, securities, or property for their shares, shall constitute a liquidation, dissolution, or winding-up of the Corporation.

#### Section 6. Redemption.

(a) The Series A Preferred Stock is perpetual and has no maturity date. The Series A Preferred Stock is not subject to any mandatory redemption, sinking fund, or other similar provision. Except for the redemption upon the occurrence of a Regulatory Capital Treatment Event (as defined below), as described below, the Series A Preferred Stock is not redeemable prior to the First Reset Date. On and after the First Reset Date, shares of the Series A Preferred Stock then outstanding will be redeemable at the option of the Corporation, in whole or in part, from time to time, on any Series A Dividend Payment Date, at a redemption price equal to \$1,000 per share, plus any declared and unpaid dividends, without accumulation of any undeclared dividends, to, but excluding, the date of redemption. Holders of the Series A Preferred Stock will have no right to require the redemption or repurchase of Series A Preferred Stock. Notwithstanding the foregoing, within 90 days following the occurrence of a Regulatory Capital Treatment Event, the Corporation, at its option, may redeem, at any time, all (but not less than all) of the shares of the Series A Preferred Stock at the time outstanding, at a redemption price equal to \$1,000 per share, plus any declared and unpaid dividends, without accumulation of any undeclared dividends, upon notice given as provided in subsection (b) below. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the record date for a Series A Dividend Period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such Dividend Record Date relating to the Series A Dividend Payment Date as provided in Section 4(c) above. In all cases, the Corporation may not redeem shares of the Series A Preferred Stock without having received the prior approval of the Federal Reserve or any Appropriate Federal Banking Agency if then required under capital rules or guidelines applicable to the Corporation.

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A “**Regulatory Capital Treatment Event**” means the good faith determination by the Corporation that, as a result of (i) any amendment to, clarification of, or change in, the laws, rules, or regulations of the United States (including, for the avoidance of doubt, any agency or instrumentality of the United States, including the Federal Reserve and other appropriate federal bank regulatory agencies) or any political subdivision of or in the United States (including, for the avoidance of doubt, any agency or instrumentality of the United States, including the Federal Reserve and other federal bank regulatory agencies) that is enacted or becomes effective after the initial issuance of any share of the Series A Preferred Stock; (ii) any proposed change in those laws, rules, or regulations that is announced or becomes effective after the initial issuance of any share of the Series A Preferred Stock; or (iii) any official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying those laws, rules, or regulations or policies with respect thereto that is announced or becomes effective after the initial issuance of any share of the Series A Preferred Stock, there is more than an insubstantial risk that the Corporation will not be entitled to treat the full liquidation value of \$1,000 per share of the Series A Preferred Stock then outstanding as “Tier 1 Capital” (or its equivalent) for purposes of the capital adequacy guidelines, rules or regulations of the Federal Reserve (or, as and if applicable, the capital adequacy rules, guidelines or regulations of any successor Appropriate Federal Banking Agency), as then in effect and applicable, for so long as any share of the Series A Preferred Stock is outstanding.

(b) If shares of Series A Preferred Stock are to be redeemed, the notice of redemption shall be given to the holders of record of Series A Preferred Stock to be redeemed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the Corporation’s stock register not less than 30 days nor more than 60 days prior to the date fixed for redemption thereof (provided that, if the shares of Series A Preferred Stock or the depositary shares representing Series A Preferred Stock, if any, are held in book-entry form through The Depository Trust Corporation (“**DTC**”), the Corporation may give such notice in any manner permitted by DTC). Each notice of redemption will include a statement setting forth (i) the redemption date; (ii) the number of shares of Series A Preferred Stock to be redeemed and, if less than all the shares are to be redeemed, the number of such shares to be redeemed; (iii) the redemption price; (iv) the place or places where certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. If notice of redemption of any shares of Series A Preferred Stock has been duly given and if the funds necessary for such redemption have been set aside by the Corporation for the benefit of the holders of any shares of Series A Preferred Stock so called for redemption, then, on and after the redemption date, dividends will cease to accrue on such shares of Series A Preferred Stock; such shares of Series A Preferred Stock shall no longer be deemed outstanding; and all rights of the holders of such shares will terminate, except the right to receive the redemption price described in sub-section (a) above, without interest.

(c) In case of any redemption of only part of the shares of Series A Preferred Stock at the time outstanding, the shares to be redeemed shall be selected (1) pro rata from the holders of record of the Series A Preferred Stock in proportion to the number of shares of the Series A Preferred Stock held by such holders, (2) by lot, or (3) in such other manner as the Corporation may determine to be equitable and permitted by DTC and the rules of any national securities exchange on which the Series A Preferred Stock, or the depositary shares representing Series A Preferred Stock, if any, is listed.

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Subject to the provisions hereof, the Board (or a duly authorized committee of the Board) shall have full power and authority to prescribe the terms and conditions on which shares of the Series A Preferred Stock shall be redeemed from time to time. If the Corporation shall have issued certificates for the Series A Preferred Stock and fewer than all shares represented by any certificates are redeemed, new certificates shall be issued representing the unredeemed shares without charge to the holders thereof.

#### Section 7. Voting Rights.

(a) Except as provided below or as expressly required by law, the holders of shares of Series A Preferred Stock shall have no voting power, and no right to vote on any matter at any time, either as a separate series or class or together with any other series or class of shares of capital stock of the Corporation, and shall not be entitled to call a meeting of the holders of any series or class of shares of capital stock of the Corporation for any purpose, nor shall they be entitled to participate in any meeting of the holders of the Common Stock. Each holder of Series A Preferred Stock shall have one vote per share on any matter on which holders of Series A Preferred Stock are entitled to vote.

(b) If and whenever dividends on any shares of the Series A Preferred Stock or any shares of Voting Preferred Stock shall not have been declared and paid for at least six Series A Dividend Periods, whether or not consecutive (a “**Nonpayment Event**”), the number of directors then constituting the Board shall automatically be increased by two and the holders of the Series A Preferred Stock, together with the holders of all outstanding shares of Voting Preferred Stock, voting together as a single class, shall be entitled to elect two additional directors (the “**Preferred Stock Directors**”) to the Board of the Corporation, provided that the Board shall at no time include more than two Preferred Stock Directors (including, for purposes of this limitation, all directors that the holders of any series of Voting Preferred Stock are entitled to elect pursuant to like voting rights) and provided, further, that the election of any Preferred Stock Directors shall not cause the Corporation to violate the corporate governance requirements of the Nasdaq Stock Market (or any other exchange on which the Corporation’s securities may be listed), including the requirements that listed companies must have a majority of independent directors.

In the event that the holders of the Series A Preferred Stock, and, if applicable, such other holders of Voting Preferred Stock, shall be entitled to vote for the election of the Preferred Stock Directors following a Nonpayment Event, such directors shall be initially elected following such Nonpayment Event only at a special meeting called at the request of any holder of record of Series A Preferred Stock or of any other series of Voting Preferred Stock then outstanding which have the right to exercise voting rights similar to those of the Series A Preferred Stock described above (unless such request for a special meeting is received less than 90 days before the date fixed for the next annual or special meeting of the shareholders of the Corporation, in which event such election shall be held only at such next annual or special meeting of shareholders), and at each subsequent annual meeting of shareholders of the Corporation at which the term of a preferred director would conclude. If, as of the date of election of any Preferred Stock Director, the Corporation’s board of directors shall then be divided into two or more classes, then such Preferred Stock Director shall be elected as a member of such class as may be selected by the Corporation’s secretary. Such request to call a special meeting for the initial election of the Preferred Stock Directors after a Nonpayment Event shall be made by written notice, signed by the requisite holders of Series A Preferred Stock or any series of Voting Preferred Stock, and delivered to the Secretary of the Corporation in such manner as provided for in Section 12 below, or as may otherwise be required by law.

When dividends have been paid (or declared and a sum sufficient for the payment of such dividends has been set aside for payment) on the Series A Preferred Stock and any Voting Preferred Stock for at least four consecutive quarterly Series A Dividend Periods after a Nonpayment Event, then the right of the holders of Series A Preferred Stock and Voting Preferred Stock to elect the Preferred Stock Directors shall cease (but subject always to re-vesting of such voting rights in the case of any future Nonpayment Event), and, if and when any rights of holders of Series A Preferred Stock and Voting Preferred Stock to elect the Preferred Stock Directors shall have ceased, the terms of office of all the Preferred Stock Directors shall immediately terminate and the number of directors constituting the Board shall automatically be reduced by two.

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Any Preferred Stock Director may be removed at any time without cause by the holders of record of a majority of all of the outstanding shares of the Series A Preferred Stock and Voting Preferred Stock, when they have the voting rights described above (voting together as a single class). So long as a Nonpayment Event shall continue, any vacancy in the office of a Preferred Stock Director (other than prior to the initial election of Preferred Stock Directors after a Nonpayment Event) may be filled by the written consent of the Preferred Stock Director remaining in office, or if none remains in office, by a vote of the holders of record of a majority of all of the outstanding shares of the Series A Preferred Stock and Voting Preferred Stock, when they have the voting rights described above (voting together as a single class), in each case to serve until the next annual meeting of shareholders or, if the Corporation's board of directors shall then be divided into two or more classes, for the term of a class of directors selected by the Corporation's secretary; provided that the filling of any such vacancy shall not cause the Corporation to violate the corporate governance requirements of the Nasdaq Stock Market (or any other exchange on which the Corporation's securities may be listed), including the requirements that listed companies must have a majority of independent directors. Any such vote of shareholders to remove, or to fill a vacancy in the office of, a Preferred Stock Director may be taken only at a special meeting of such shareholders, called as provided above for an initial election of Preferred Stock Director after a Nonpayment Event (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the shareholders, in which event such election shall be held at such next annual or special meeting of shareholders). The Preferred Stock Directors shall each be entitled to one vote per director on any matter that shall come before the Board for a vote. Each Preferred Stock Director elected at any special meeting of shareholders or by written consent of the other Preferred Stock Director shall hold office until the next annual meeting of the shareholders if such office shall not have previously terminated as above provided.

(c) So long as any shares of Series A Preferred Stock are outstanding, in addition to any other vote or consent of shareholders required by law or by the Articles of Incorporation, the vote or consent of the holders of at least two-thirds of all of the shares of Series A Preferred Stock and Voting Preferred Stock at the time outstanding and entitled to vote thereon, voting together as a single class, shall be necessary for effecting or validating:

(i) Any amendment or alteration of the Articles of Incorporation to authorize or create, or increase the authorized amount of, any shares of any class or series of capital stock of the Corporation ranking senior to the Series A Preferred Stock with respect to either or both the payment of dividends and/or the distribution of assets on any liquidation, dissolution or winding up of the Corporation;

(ii) Any amendment, alteration or repeal of any provision of the Articles of Incorporation so as to materially and adversely affect the special rights, preferences, privileges or voting powers of the Series A Preferred Stock, taken as a whole; *provided, however,* that any amendment to authorize, create, or issue, or increase the authorized amount of, any Series A Junior Securities or any Series A Parity Securities, or any securities convertible into or exchangeable for Series A Junior Securities or Series A Parity Securities will not be deemed to materially and adversely affect the powers, preferences, privileges, or rights of Series A Preferred Stock; or

(iii) Any consummation of a binding share exchange or reclassification involving the Series A Preferred Stock, or of a merger or consolidation of the Corporation with another corporation or other entity, unless in each case (1) the shares of Series A Preferred Stock remain outstanding or, in the case of any such merger or consolidation with respect to which the Corporation is not the surviving or resulting entity, are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (2) such shares remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, and limitations and restrictions thereof, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers, and limitations and restrictions thereof, of the Series A Preferred Stock immediately prior to such consummation, taken as a whole;

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*provided, however,* that for all purposes of this Section 7(c), any increase in the amount of the authorized or issued Series A Preferred Stock or authorized Preferred Stock, or the creation and issuance, or an increase in the authorized or issued amount, of any Series A Parity Securities or Series A Junior Securities (whether dividends payable on such securities, if any, are cumulative or non-cumulative) will not be deemed to materially and adversely affect the rights, preferences, privileges or voting powers of, and shall not require the affirmative vote or consent of, the holders of any outstanding shares of Series A Preferred Stock.

If any amendment, alteration, repeal, share exchange, reclassification, merger or consolidation specified in this Section 7(c) would adversely affect the Series A Preferred Stock and one or more but not all other series of Preferred Stock, then only the Series A Preferred Stock and such series of Preferred Stock as are adversely affected by and entitled to vote on the matter shall vote on the matter together as a single class (in lieu of all other series of Preferred Stock).

(d) Without the consent of the holders of the Series A Preferred Stock, so long as such action does not adversely affect the rights, preferences, privileges and voting powers, and limitations and restrictions thereof, of the Series A Preferred Stock, the Corporation may amend, alter, supplement or repeal any terms of the Series A Preferred Stock:

(i) to cure any ambiguity, or to cure, correct or supplement any provision contained in this Certificate of Designation that may be defective or inconsistent; or

(ii) to make any provision with respect to matters or questions arising with respect to the Series A Preferred Stock that is not inconsistent with the provisions of this Certificate of Designation.

(e) No vote or consent of the holders of Series A Preferred Stock shall be required pursuant to Section 7(b), (c) or (d) above if, at or prior to the time when any such vote or consent would otherwise be required pursuant to such Section, all outstanding shares of Series A Preferred Stock shall have been redeemed, or shall have been called for redemption upon proper notice and sufficient funds shall have been set aside for such redemption, in each case pursuant to Section 6 above.

(f) The rules and procedures for calling and conducting any meeting of the holders of Series A Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board (or any duly authorized committee of the Board), in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Articles of Incorporation, the Bylaws, applicable law and the rules of any national securities exchange or other trading facility on which the Series A Preferred Stock, or the depositary shares representing Series A Preferred Stock, if any, is listed or traded at the time. Whether the vote or consent of the holders of a plurality, majority or other portion of the shares of Series A Preferred Stock, Series A Parity Securities and/or Voting Preferred Stock has been cast or given on any matter on which the holders of shares of Series A Preferred Stock are entitled to vote shall be determined by the Corporation by reference to the specified liquidation amounts of the shares voted or covered by the consent.

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Section 8. No Conversion Rights. The holders of shares of Series A Preferred Stock shall not have any rights to convert such shares into shares of any other class or series of securities of the Corporation.

Section 9. No Preemptive Rights. The holders of shares of Series A Preferred Stock will have no preemptive rights with respect to any shares of the Corporation's capital stock or any of its other securities convertible into or carrying rights or options to purchase or otherwise acquire any such capital stock or any interest therein, regardless of how any such securities may be designated, issued, or granted.

Section 10. Certificates. The Corporation may at its option issue shares of Series A Preferred Stock without certificates.

Section 11. Record Holders. To the fullest extent permitted by applicable law, the Corporation and the transfer agent for the Series A Preferred Stock may deem and treat the record holder of any share of Series A Preferred Stock as the true and lawful owner thereof for all purposes, and neither the Corporation nor such transfer agent shall be affected by any notice to the contrary.

Section 12. Notices. All notices or communications in respect of Series A Preferred Stock shall be sufficiently given if given in writing and delivered in person or by first class mail, postage prepaid, or if given in such other manner as may be permitted in this Certificate of Designation, in the Articles of Incorporation or Bylaws or by applicable law.

Section 13. No Other Rights. The shares of Series A Preferred Stock shall not have any rights, preferences, privileges, or voting powers or relative, participating, optional, or other special rights, or qualifications, limitations, or restrictions thereof, other than as set forth in this Certificate of Designation, or the Articles of Incorporation, or as provided by applicable law.

**FURTHER RESOLVED**, that the statements contained in the foregoing resolutions creating and designating the said issue of 7.750% Fixed Rate Reset Non-Cumulative Perpetual Preferred Stock, Series A and fixing the number, powers, preferences and relative, optional, participating, and other special rights and the qualifications, limitations, restrictions, and other distinguishing characteristics thereof shall, upon the effective date of said series, be deemed to be included in and be a part of the articles of incorporation, as amended, of Midland States Bancorp, Inc. pursuant to the provisions of the Illinois Business Corporation Act.

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DEPOSIT AGREEMENT

among

MIDLAND STATES BANCORP, INC.,

COMPUTERSHARE INC.,

and

COMPUTERSHARE TRUST COMPANY, N.A., together, the Depository,

and

THE HOLDERS FROM TIME TO TIME OF

THE DEPOSITARY RECEIPTS DESCRIBED HEREIN

Dated as of August 24, 2022

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DEPOSIT AGREEMENT, dated as of August 24, 2022, among (i) Midland States Bancorp, Inc., an Illinois corporation, (ii) Computershare Inc., a Delaware corporation, and Computershare Trust Company, N.A., a federally chartered trust company and affiliate of Computershare, and (iii) the Holders from time to time of the Receipts described herein.

WHEREAS, it is desired to provide, as hereinafter set forth in this Deposit Agreement, for the deposit of shares of Series A Preferred Stock of the Corporation from time to time with the Depository for the purposes set forth in this Deposit Agreement and for the issuance hereunder of Receipts evidencing Depository Shares in respect of the Series A Preferred Stock so deposited; and

WHEREAS, the Receipts are to be substantially in the form of Exhibit A attached hereto, with appropriate insertions, modifications and omissions, as hereinafter provided in this Deposit Agreement;

NOW, THEREFORE, in consideration of the premises, the parties hereto agree as follows:

## **ARTICLE I DEFINED TERMS**

### Section 1.1. Definitions.

The following definitions shall for all purposes, unless otherwise indicated, apply to the respective terms used in this Deposit Agreement:

“Affiliate” shall mean, with respect to any Person, any Person directly or indirectly controlling, controlled by, or under common control with, such other Person. For the purpose of this definition, “controlling,” “controlled by” or “under common control with,” mean the ownership, direct or indirect, of the power to direct or cause the direction of the operation or management and policies of a Person, whether through the ownership or control of voting interests, by contract or otherwise.

“Computershare” shall mean Computershare Inc., a Delaware corporation.

“Corporation” shall mean Midland States Bancorp, Inc., an Illinois corporation, and its successors.

“Deposit Agreement” shall mean this Deposit Agreement, as amended or supplemented from time to time in accordance with the terms hereof.

“Depository” shall mean Computershare and the Trust Company, collectively, and any successor Depository hereunder.

“Depository Shares” shall mean the depository shares, each representing 1/40<sup>th</sup> of one share of the Series A Preferred Stock, evidenced by a Receipt.

“Depository’s Agent” shall mean an agent appointed by the Depository pursuant to Section 7.5.

“Depository’s Office” shall mean the principal office of the Depository in Canton, Massachusetts, at which at any particular time its depository receipt business shall be administered.

“DTC” shall mean The Depository Trust Company, together with its successors and assigns.

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

“Exchange Event” shall mean with respect to any Global Registered Receipt:

(1) (A) the Global Receipt Depository which is the Holder of such Global Registered Receipt notifies the Corporation that it is no longer willing or able to properly discharge its responsibilities under any Letter of Representations or that it is no longer eligible or in good standing under the Exchange Act and (B) the Corporation has not appointed a qualified successor Global Receipt Depository within 90 calendar days after the Corporation received such notice, or

(2) the Corporation in its sole discretion notifies the Depository in writing that the Receipts or portion thereof issued or issuable in the form of one or more Global Registered Receipts shall no longer be represented by such Global Registered Receipt.

“Global Receipt Depository” shall mean, with respect to any Receipt issued hereunder, DTC or such other entity designated as Global Receipt Depository by the Corporation in or pursuant to this Deposit Agreement, which entity must be, to the extent required by any applicable law or regulation, a clearing agency registered under the Exchange Act.

“Global Registered Receipt” shall mean a global registered Receipt registered in the name of a nominee of DTC.

“Letter of Representations” shall mean any applicable agreement among the Corporation, the Depository and a Global Receipt Depository with respect to such Global Receipt Depository’s rights and obligations with respect to any Global Registered Receipt, as the same may be amended, supplemented, restated or otherwise modified from time to time and any successor agreement thereto.

“Officer’s Certificate” means a certificate, which is signed by an officer of the Corporation and which shall include the terms and conditions of the Series A Preferred Stock to be issued by the Corporation and deposited with the Depository in accordance with the terms hereof.

“Person” shall mean any natural person, partnership, joint venture, firm, corporation, limited liability company, limited liability partnership, unincorporated association, trust or other entity, and shall include any successor (by merger or otherwise) of the foregoing.

“Receipt” shall mean one of the depository receipts issued hereunder, substantially in the form set forth as Exhibit A hereto, whether in definitive or temporary form, and evidencing a number of Depository Shares held of record by a Record Holder.

“Record Holder” or “Holder” as applied to a Receipt shall mean the Person in whose name such Receipt is registered on the books of the Depositary maintained for such purpose.

“Redemption Date” shall have the meaning set forth in Section 2.8.

“Redemption Price” shall mean \$1,000 per share, plus the per share amount of any declared and unpaid dividends, without accumulation of any undeclared dividends, on the Series A Preferred Stock to, but excluding, the Redemption Date.

“Registrar” shall mean the Depositary or such other successor Person which shall be appointed by the Corporation to register ownership and transfers of Receipts and the deposited Series A Preferred Stock as herein provided. If a successor Registrar shall be so appointed, all references herein to “the books” of or maintained by the Depositary shall be deemed, as applicable, to refer as well to the register maintained by such Registrar for such purpose.

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

“Series A Preferred Stock” shall mean the shares of the Corporation’s 7.750% Fixed Rate Reset Non-Cumulative Perpetual Preferred Stock, Series A, \$2.00 par value per share, with a liquidation preference of \$1,000 per share, designated in the Statement of Resolution and described in the Officer’s Certificate delivered pursuant to Section 2.2 hereof.

“Statement of Resolution” shall mean the Statement of Resolution filed or to be filed by the Corporation with the Secretary of State of the State of Illinois creating the Series A Preferred Stock.

“Transfer Agent” shall mean the Trust Company or such other successor Person which shall be appointed by the Corporation to transfer the Receipts or the deposited shares of the Series A Preferred Stock, as the case may be, as herein provided.

“Trust Company” shall mean Computershare Trust Company, N.A., a federally chartered trust company and affiliate of Computershare.

**ARTICLE II**  
**FORM OF RECEIPTS, DEPOSIT OF SERIES A PREFERRED STOCK, EXECUTION**  
**AND DELIVERY, TRANSFER, SURRENDER AND REDEMPTION OF RECEIPTS**

Section 2.1. Form and Transfer of Receipts.

The definitive Receipts shall be substantially in the form set forth in Exhibit A attached to this Deposit Agreement, with appropriate insertions, modifications and omissions, as hereinafter provided (but which do not affect the rights, duties, obligations or immunities of the Depositary as set forth in this Deposit Agreement) and shall be engraved or otherwise prepared so as to comply with the applicable rules of The Nasdaq Stock Market LLC. Pending the preparation of definitive Receipts, the Depositary, upon the order of the Corporation delivered in compliance with Section 2.2, shall be authorized and instructed to, and shall execute and deliver temporary Receipts which may be printed, lithographed, typewritten, mimeographed or otherwise substantially of the tenor of the definitive Receipts in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations (but which do not affect the rights, duties, obligations or immunities of the Depositary as set forth in this Deposit Agreement), with the Corporation's prior approval, as the Persons executing such Receipts may reasonably determine necessary, as evidenced by their execution of such Receipts. If temporary Receipts are issued, the Corporation and the Depositary will cause definitive Receipts to be prepared without unreasonable delay. After the preparation of definitive Receipts, the temporary Receipts shall be exchangeable for definitive Receipts upon surrender of the temporary Receipts at an office described in the penultimate paragraph of Section 2.2. Upon surrender for cancellation of any one or more temporary Receipts, the Depositary is hereby authorized and instructed to, and shall execute and deliver in exchange therefor, definitive Receipts representing the same number of Depositary Shares as represented by the surrendered temporary Receipt or Receipts registered in the name (and only in the name) of the holder of the temporary receipt; provided that the Depositary has been provided with all necessary information that it may request in order to execute and deliver such definitive Receipt or Receipts. Such exchange shall be made at the Corporation's expense and without any charge therefor. Until so exchanged, the temporary Receipts shall in all respects be entitled to the same benefits under this Deposit Agreement, and with respect to the Series A Preferred Stock, as definitive Receipts.

Any Receipt to be executed by the Depositary pursuant to this Deposit Agreement shall be executed by the manual or facsimile signature of a duly authorized officer of the Depositary. No Receipt shall be entitled to any benefits under this Deposit Agreement or be valid or obligatory for any purpose unless it shall have been executed manually or by the facsimile signature of a duly authorized officer of the Depositary or, if a Registrar for the Receipts (other than the Depositary) shall have been appointed, by the manual or facsimile signature of a duly authorized officer of the Depositary and countersigned by the manual or facsimile signature by a duly authorized officer of such Registrar. The Depositary shall record on its books each Receipt so signed and delivered as hereinafter provided. Receipts bearing the manual, electronic or facsimile signature of a duly authorized signatory of the Depositary who was at such time a proper signatory of the Depositary shall bind the Depositary, notwithstanding that such signatory ceased to hold such office prior to the execution and delivery of such Receipts by the Registrar or did not hold such office on the date of issuance of such Receipts.

Receipts shall be in denominations of any number of whole Depositary Shares. All Receipts shall be dated the date of their issuance.

Receipts may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Deposit Agreement (but which do not affect the rights, duties, obligations or immunities of the Depositary) all as may be (i) reasonably required by the Depositary and approved by the Corporation, (ii) required to comply with any applicable law or any regulation thereunder or with the rules and regulations of any securities exchange upon which the Series A Preferred Stock, the Depositary Shares or the Receipts may be listed or to conform with any usage with respect thereto, or (iii) to indicate any special limitations or restrictions to which any particular Receipt is subject.

Title to Depositary Shares evidenced by a Receipt which is properly endorsed or accompanied by a properly executed instrument of transfer accompanied by a guarantee of the signature thereon by a guarantor institution that is a participant in a signature guarantee program approved by the Securities Transfer Association at a guarantee level acceptable to the Transfer Agent (a "Signature Guarantee") or endorsement, shall be transferable by delivery of such Receipt with the same effect as if such Receipt were a negotiable instrument; provided, however, that until transfer of any particular Receipt shall be registered on the books of the Depositary as provided in Section 2.3, the Depositary may, notwithstanding any notice to the contrary, treat the Record Holder thereof at such time as the absolute owner thereof for the purpose of determining the Person entitled to distributions of dividends or other distributions or to any notice provided for in this Deposit Agreement and for all other purposes.

The Corporation shall provide to the Depositary an opinion of counsel which shall state that all Depositary Shares or Series A Preferred Stock, as applicable, are (i) registered under the Securities Act or are exempt from such registration and (ii) validly issued, fully paid and non-assessable.

Section 2.2. Deposit of Series A Preferred Stock; Execution and Delivery of Receipts in Respect Thereof.

Subject to the terms and conditions of this Deposit Agreement, the Corporation may from time to time deposit shares of Series A Preferred Stock under this Deposit Agreement by delivery to the Depositary of a certificate or certificates for such shares of Series A Preferred Stock to be deposited, properly endorsed in the name of the Depositary (or its nominee) or accompanied, if required by the Depositary, by a duly executed instrument of transfer or endorsement including a Signature Guarantee in a form satisfactory to the Depositary, together with (i) all such certifications as may be required by the Depositary pursuant to this Deposit Agreement, (ii) an instruction letter from the Corporation authorizing the Depositary to register such shares of the Series A Preferred Stock in book-entry form, each in form satisfactory to the Depositary, and (iii) an Officer's Certificate attaching the Statement of Resolution and all other information required to be set forth therein, and together with a written order of the Corporation directing the Depositary to execute and deliver to, or upon the written order of, the Person or Persons stated in such order, a Receipt or Receipts evidencing in the aggregate the number of Depositary Shares representing such deposited shares of Series A Preferred Stock.

The shares of Series A Preferred Stock that are deposited pursuant to this Deposit Agreement shall be held by the Depositary at the Depositary's Office or at such other place or places as the Depositary shall determine. The Depositary shall not lend any shares of Series A Preferred Stock deposited hereunder.

Upon receipt by the Depositary of a certificate or certificates for shares of Series A Preferred Stock to be deposited in accordance with the provisions of this Section 2.2, together with the other documents required as specified above, and upon recordation of the shares of Series A Preferred Stock on the books of the Corporation (or its duly appointed transfer agent) in the name of the Depositary (or its nominee), the Depositary, subject to the terms and conditions of this Deposit Agreement, shall execute and deliver to or upon the written order of the Person or Persons named in the order delivered to the Depositary referred to in the first paragraph of this Section 2.2, a Receipt or Receipts evidencing in the aggregate the number of Depositary Shares representing the shares of Series A Preferred Stock so deposited and registered in such name or names as may be requested by such Person or Persons. The Depositary shall execute and deliver such Receipt or Receipts at the Depositary's Office or such other offices, if any, as the Depositary may designate. Delivery at other offices shall be at the risk and expense of the Person requesting such delivery.

Section 2.3. Registration of Transfer of Receipts.

The Corporation hereby appoints Computershare and the Trust Company, collectively, to act as the Registrar and Transfer Agent for the Receipts and each of Computershare and the Trust Company hereby accepts such appointment, subject to the express terms and conditions of this Deposit Agreement (and no implied terms or conditions) and, as such, the Depository shall register on its books from time to time, transfers of Receipts, upon any surrender thereof by the Holder in person or by duly authorized attorney, properly endorsed or accompanied by a properly executed instrument of transfer or endorsement, including a Signature Guarantee, together with evidence of the payment by the applicable party of any taxes or charges as may be required by law. Thereupon, the Depository shall execute a new Receipt or Receipts evidencing the same aggregate number of Depository Shares as those evidenced by the Receipt or Receipts surrendered and deliver such new Receipt or Receipts to or upon the order of the Person entitled thereto. With respect to the appointment of the Computershare and the Trust Company, collectively, as Registrar and Transfer Agent in respect of the Receipts, the Depository, in its respective capacities under such appointments, shall be entitled to the same rights, indemnities, immunities and benefits as the Depository hereunder as if explicitly named in each such provision. Any references to the Depository herein shall, to the extent applicable, also mean the Depository as the Transfer Agent and Registrar.

The Depository shall not be required (a) to issue, transfer or exchange any Receipts for a period beginning at the opening of business 15 days next preceding any selection of Depository Shares and Series A Preferred Stock to be redeemed and ending at the close of business on the day of the sending of notice of redemption, or (b) to transfer or exchange for another Receipt any Receipt representing Depository Shares called or being called for redemption in whole or in part except as provided in Section 2.8.

Section 2.4. Split-ups and Combinations of Receipts; Surrender of Receipts and Withdrawal of Series A Preferred Stock.

Upon surrender of a Receipt or Receipts at the Depository's Office or at such other offices as it may designate for the purpose of effecting a split-up or combination of such Receipt or Receipts, and the receipt by the Depository of all other necessary information and documents, and subject to the terms and conditions of this Deposit Agreement, the Depository shall execute by manual, electronic, or facsimile signature a new Receipt or Receipts in the authorized denomination or denominations requested, evidencing the aggregate number of Depository Shares evidenced by the Receipt or Receipts surrendered, and shall deliver such new Receipt or Receipts to or upon the order of the Holder of the Receipt or Receipts so surrendered; provided, however, that the Depository shall not issue any Receipt evidencing a fractional Depository Share.

Any Holder of a Receipt or Receipts may withdraw the number of whole shares of Series A Preferred Stock (and all money and other property, if any, represented thereby) by surrendering such Receipt or Receipts at the Depositary's Office or at such other offices as the Depositary may designate for such withdrawals; provided, however that a Holder of a Receipt or Receipts may not withdraw such whole shares of Series A Preferred Stock (or money and other property, if any, represented thereby) which has previously been called for redemption. After such surrender and upon the receipt of written instructions from the Holder of such Receipt or Receipts, without unreasonable delay (provided that the Corporation has provided the Depositary with all necessary documentation), the Depositary shall deliver to such Holder, or to the Person or Persons designated by such Holder as hereinafter provided, the number of whole shares of Series A Preferred Stock (and all money and other property, if any), represented by such Receipt or Receipts so surrendered for withdrawal, but Holders of such whole shares of Series A Preferred Stock will not thereafter be entitled to deposit such shares of Series A Preferred Stock hereunder or to receive a Receipt evidencing Depositary Shares therefor. If a Receipt delivered by the Holder to the Depositary in connection with such withdrawal shall evidence a number of Depositary Shares in excess of the number of Depositary Shares representing the number of whole shares of Series A Preferred Stock to be withdrawn, the Depositary shall at the same time, in addition to such number of whole shares of Series A Preferred Stock and such money and other property, if any, to be so withdrawn, deliver to such Holder, or subject to Section 2.3 upon the written order of such Holder, a new Receipt evidencing such excess number of Depositary Shares. Delivery of such shares of the Series A Preferred Stock and such money and other property being withdrawn may be made by the delivery of such certificates, documents of title and other instruments as the Depositary may deem appropriate, which, if required by the Depositary, shall be properly endorsed or accompanied by proper instruments of transfer.

In no event will fractional shares of Series A Preferred Stock (or any cash payment in lieu thereof) be delivered by the Depositary. Delivery of the Series A Preferred Stock and money and other property, if any, being withdrawn may be made by the delivery of such certificates, documents of title and other instruments as the Depositary may deem appropriate.

If the Series A Preferred Stock and the money and other property, if any, being withdrawn are to be delivered to a Person or Persons other than the Record Holder of the related Receipt or Receipts being surrendered for withdrawal of such Series A Preferred Stock, such Holder shall execute and deliver to the Depositary, a written order so directing the Depositary, and the Depositary may require that the Receipt or Receipts surrendered by such Holder for withdrawal of such shares of Series A Preferred Stock be properly endorsed in blank or accompanied by a properly executed instrument of transfer in blank.

Delivery of the Series A Preferred Stock and the money and other property, if any, represented by Receipts surrendered for withdrawal shall be made by the Depositary at the Depositary's Office, except that, at the request, risk and expense of the Holder surrendering such Receipt or Receipts and for the account of the Holder thereof, such delivery may be made at such other place as may be designated by such Holder.

Section 2.5. Limitations on Execution and Delivery, Transfer, Surrender and Exchange of Receipts.

As a condition precedent to the execution and delivery, registration of transfer, split-up, combination, surrender or exchange of any Receipt, the Depositary, any of the Depositary's Agents or the Corporation may require (i) payment to it of a sum sufficient for the payment (or, in the event that the Depositary or the Corporation shall have made such payment, the reimbursement to it) of any charges, taxes or expenses payable by the Holder of a Receipt pursuant to Section 5.8 (including any such tax or charge with respect to any shares of Series A Preferred Stock being deposited or withdrawn or any charges or expense pursuant to Section 3.2 and Section 5.7), (ii) the production of evidence satisfactory to it as to the identity and genuineness of any signature (which evidence may include a Signature Guarantee) and any other reasonable evidence of authority that may be required by the Depositary, and (iii) compliance with such additional requirements, if any, as the Depositary or the Corporation may establish consistent with the provisions of this Deposit Agreement and/or applicable law and as may be required by any securities exchange on which the Series A Preferred Stock, the Depositary Shares or the Receipts may be listed.

The deposit of shares of Series A Preferred Stock may be refused, the delivery of Receipts against such shares of Series A Preferred Stock may be suspended, the registration of transfer of Receipts may be refused and the registration of transfer, surrender or exchange of outstanding Receipts may be suspended (i) during any period when the register of stockholders of the Corporation is closed or (ii) if any such action is deemed necessary or advisable by the Depositary, any of the Depositary's Agents or the Corporation at any time or from time to time because of any requirement of law or of any government or governmental body or commission or under any provision of this Deposit Agreement.

Section 2.6. Lost Receipts, etc.

In case any Receipt shall be mutilated, destroyed, lost or stolen, and absent notice to the Depositary that such Receipt has been acquired by a *bona fide* purchaser, the Depositary in its discretion may execute and deliver in exchange therefor, a Receipt of like form and tenor in exchange and substitution for such mutilated Receipt upon cancellation thereof, or in lieu of and in substitution for such destroyed, lost or stolen Receipt, upon (i) the filing by the Holder thereof with the Depositary of evidence satisfactory to the Depositary of such destruction or loss or theft of such Receipt, of the authenticity thereof and of his or her ownership thereof; (ii) the Holder thereof furnishing the Depositary with an affidavit and an open penalty surety bond or other indemnity reasonably satisfactory to the Depositary, holding the Depositary and the Corporation harmless; and (iii) the payment of any reasonable expenses in connection with such execution and delivery. Such Holder shall also comply with such other reasonable regulations and pay such other reasonable charges as the Depositary may prescribe.

Section 2.7. Cancellation and Destruction of Surrendered Receipts.

All Receipts surrendered to the Depositary or any Depositary's Agent shall be cancelled by the Depositary. Except as prohibited by applicable law or regulation, the Depositary is authorized and directed to destroy all Receipts so cancelled.

## Section 2.8. Redemption of Series A Preferred Stock.

Whenever the Corporation shall be permitted and shall elect to redeem shares of Series A Preferred Stock in accordance with the terms of the Statement of Resolution, it shall (unless otherwise agreed to in writing with the Depositary) give or cause to be given to the Depositary, not less than 30 days and not more than 60 days prior to the Redemption Date (as defined below), notice of the date of such proposed redemption of Series A Preferred Stock and of the number of such shares held by the Depositary to be so redeemed and the applicable Redemption Price, which notice shall be accompanied by a certificate from the Corporation stating that such redemption of shares of Series A Preferred Stock is in accordance with the provisions of the Statement of Resolution. On the applicable Redemption Date, provided that the Corporation shall then have paid or caused to be paid in full to the Depositary, the Redemption Price in immediately available funds of the Series A Preferred Stock to be redeemed, the Depositary shall redeem the number of Depositary Shares representing such shares of Series A Preferred Stock. The Depositary shall, if requested in writing and provided with all necessary information and documents, mail notice of the Corporation's redemption of shares of Series A Preferred Stock and the proposed simultaneous redemption of the number of Depositary Shares representing such shares of the Series A Preferred Stock to be redeemed by first-class mail, postage prepaid, at the respective last addresses as they appear on the records of the Depositary or transmit in accordance with the applicable procedures of any Global Receipt Depositary or by such other method approved by the Depositary (in its reasonable discretion), in either case not less than 30 days and not more than 60 days prior to the date fixed for redemption of such shares of Series A Preferred Stock and Depositary Shares (the "Redemption Date"), to the Record Holders of the Receipts evidencing the Depositary Shares to be so redeemed at the addresses of such Holders as they appear on the records of the Depositary; but neither failure to mail or transmit any such notice of redemption of Depositary Shares to one or more such Holders nor any defect in any notice of redemption of Depositary Shares to one or more such Holders shall affect the sufficiency of the proceedings for redemption as to the other Holders. Each such notice shall be prepared by the Corporation and shall state: (i) the Redemption Date; (ii) the number of Depositary Shares to be redeemed and, if less than all the Depositary Shares held by any such Holder are to be redeemed, the number of such Depositary Shares held by such Holder to be so redeemed; (iii) the applicable Redemption Price; (iv) the place or places where Receipts evidencing such Depositary Shares are to be surrendered for payment of the redemption price applicable to the Depositary Shares; and (v) that dividends in respect of the Series A Preferred Stock represented by such Depositary Shares to be redeemed will cease to accrue on such Redemption Date. In case less than all the outstanding Depositary Shares are to be redeemed, the Depositary Shares to be so redeemed shall be selected either pro rata or by lot or in such other manner as the Corporation may determine to be fair and equitable and, if applicable, permitted by DTC and the rules of any national securities exchange on which the Series A Preferred Stock is listed (which determination the Corporation will promptly notify the Depositary in writing).

Notice having been mailed or transmitted by the Depositary as aforesaid, from and after the Redemption Date (unless the Corporation shall have failed to provide the funds necessary to redeem the Series A Preferred Stock evidenced by the Depositary Shares called for redemption) (i) all dividends on the shares of Series A Preferred Stock so called for Redemption shall cease to accrue from and after such date, (ii) the Depositary Shares being redeemed from such proceeds shall be deemed no longer to be outstanding, (iii) all rights of the Holders of Receipts evidencing such Depositary Shares (except the right to receive the applicable Redemption Price) shall, to the extent of such Depositary Shares, cease and terminate, and (iv) upon surrender, in accordance with such redemption notice, of the Receipts evidencing any such Depositary Shares called for redemption (properly endorsed or assigned for transfer, if the Depositary or applicable law shall so require), such Depositary Shares shall be redeemed by the Depositary at a redemption price per Depositary Share equal to 1/40<sup>th</sup> of the Redemption Price for each share of Series A Preferred Stock so redeemed.

If fewer than all of the Depositary Shares evidenced by a Receipt are called for redemption, the Depositary will deliver to the Holder of such Receipt upon its surrender to the Depositary, together with the applicable Redemption Price for all of the Depositary Shares redeemed, a new Receipt evidencing the Depositary Shares evidenced by such prior Receipt and not called for redemption; provided, however, that the Depositary shall not issue any Receipt evidencing a fractional Depositary Share.

#### Section 2.9. Bank Accounts.

All funds received by Computershare under this Deposit Agreement that are to be distributed or applied by Computershare in the performance of services hereunder (the “Funds”) shall be held by Computershare as agent for the Corporation and deposited in one or more bank accounts to be maintained by Computershare in its name as agent for the Corporation. Until paid pursuant to this Deposit Agreement, Computershare may hold or invest the Funds through such accounts in: (i) obligations of, or guaranteed by, the United States of America, (ii) commercial paper obligations rated A-1 or P-1 or better by Standard & Poor’s Corporation (“S&P”) or Moody’s Investors Service, Inc. (“Moody’s”), respectively, (iii) money market funds that comply with Rule 2a-7 of the Investment Company Act of 1940, or (iv) demand deposit accounts, short term certificates of deposit, bank repurchase agreements or bankers’ acceptances, of commercial banks with Tier 1 capital exceeding \$1 billion or with an average rating above investment grade by S&P (LT Local Issuer Credit Rating), Moody’s (Long Term Rating) and Fitch Ratings, Inc. (LT Issuer Default Rating) (each as reported by Bloomberg Finance L.P.). Computershare shall not bear responsibility or liability for any diminution of the Funds that may result from any deposit or investment made by Computershare in accordance with this paragraph, including any losses resulting from a default by any bank, financial institution or other third party. Computershare may from time to time receive interest, dividends or other earnings in connection with such deposits or investments. Computershare shall not be obligated to pay such interest, dividends or earnings to the Corporation, any Holder or any other party.

#### Section 2.10. Receipts Issuable in Global Registered Form.

If the Corporation shall determine in a writing delivered to the Depositary that the Receipts are to be issued in whole or in part in the form of one or more Global Registered Receipts, then the Depositary shall, if instructed and provided with all necessary information, in accordance with the other provisions of this Deposit Agreement, execute and deliver one or more Global Registered Receipts evidencing the Receipts of such series which (i) shall represent, and shall be denominated in an amount equal to the aggregate number of Depositary Shares evidenced by the Receipts to be represented by such Global Registered Receipt or Receipts and (ii) shall be registered in the name of the Global Receipt Depository therefor or its nominee.

Notwithstanding any other provision of this Deposit Agreement to the contrary, unless otherwise provided in the Global Registered Receipt, a Global Registered Receipt may only be transferred in whole and only by the applicable Global Receipt Depository for such Global Registered Receipt to a nominee of such Global Receipt Depository, or by a nominee of such Global Receipt Depository to such Global Receipt Depository or another nominee of such Global Receipt Depository, or by such Global Receipt Depository or any such nominee to a successor Global Receipt Depository for such Global Registered Receipt selected or approved by the Corporation or to a nominee of such successor Global Receipt Depository. Except as provided below, owners solely of beneficial interests in a Global Registered Receipt shall not be entitled to receive physical delivery of the Receipts represented by such Global Registered Receipt. Neither any such beneficial owner nor any direct or indirect participant of a Global Receipt Depository shall have any rights under this Deposit Agreement with respect to any Global Registered Receipt held on their behalf by a Global Receipt Depository and such Global Receipt Depository may be treated by the Corporation, the Depository and any director, officer, employee or agent of the Corporation or the Depository as the Holder of such Global Registered Receipt for all purposes whatsoever. Unless and until definitive Receipts are delivered to the owners of the beneficial interests in a Global Registered Receipt, (1) the applicable Global Receipt Depository will make book-entry transfers among its participants and receive and transmit all payments and distributions in respect of the Global Registered Receipts to such participants, in each case, in accordance with its applicable procedures and arrangements, and (2) whenever any notice, payment or other communication to the holders of Global Registered Receipts is required under this Deposit Agreement, the Corporation and the Depository shall give all such notices, payments and communications specified herein to be given to such holders to the applicable Global Receipt Depository.

If an Exchange Event has occurred with respect to any Global Registered Receipt, then, in any such event, the Depository shall, upon receipt of a written order from the Corporation authorizing and directing the Depository to execute and deliver individual definitive registered Receipts in exchange for such Global Registered Receipt, shall execute and deliver, individual definitive registered Receipts, in authorized denominations and of like tenor and terms in an aggregate number of Depository Shares equal to the aggregate number of Depository Shares represented by the Global Registered Receipt being delivered in exchange for such Receipts. The Depository shall have no duties, obligations or liability under this paragraph unless and until such order has been received by the Depository.

Definitive registered Receipts issued in exchange for a Global Registered Receipt pursuant to this Section 2.10 shall be registered in such names and in such authorized denominations as the Global Receipt Depository for such Global Registered Receipt, pursuant to instructions from its participants, shall instruct the Depository in writing. The Depository shall deliver such Receipts to the Persons in whose names such Receipts are so registered.

Notwithstanding anything to the contrary in this Deposit Agreement, should the Corporation determine that the Receipts should be issued as a Global Registered Receipt, the parties hereto shall comply with the terms of any Letter of Representations.

**ARTICLE III**  
**CERTAIN OBLIGATIONS OF HOLDERS OF RECEIPTS**  
**AND THE CORPORATION**

Section 3.1. Filing Proofs, Certificates and Other Information.

Any Holder of a Receipt may be required from time to time to file such proof of residence, or other matters or other information, to execute such certificates and to make such representations and warranties as the Depository or the Corporation may reasonably deem necessary or proper. The Depository or the Corporation may withhold the delivery, or delay the registration of transfer or redemption, of any Receipt or the withdrawal of shares of Series A Preferred Stock represented by the Depository Shares and evidenced by a Receipt or withhold or delay the distribution of any dividend or other distribution or the sale of any rights or of the proceeds thereof until such proof or other information is filed or such certificates are executed or such representations and warranties are made.

Section 3.2. Payment of Taxes or Other Governmental Charges.

Holders of Receipts shall be obligated to make payments to the Depository, of certain taxes, charges and expenses, as provided in Section 5.8. Registration of transfer of any Receipt or any withdrawal of shares of Series A Preferred Stock and all money or other property, if any, represented by the Depository Shares evidenced by such Receipt may be refused until any such payment due is made, and any dividends, interest payments or other distributions may be withheld or any part of or all the Series A Preferred Stock or other property represented by the Depository Shares evidenced by such Receipt and not theretofore sold may be sold for the account of the Holder thereof (after attempting by reasonable means to notify such Holder prior to such sale), and such dividends, interest payments or other distributions or the proceeds of any such sale may be applied to any payment of such charges or expenses, with the Holder of such Receipt remaining liable for any deficiency. The Depository shall not have any duty or obligation to take any action under any section of this Deposit Agreement that requires the payment of taxes and/or charges unless and until it is satisfied that all such payments have been made.

Section 3.3. Warranty as to Series A Preferred Stock.

The Corporation hereby represents and warrants that the Series A Preferred Stock, when issued, will be duly authorized, validly issued, fully paid and nonassessable. Such representation and warranty shall survive the deposit of the Series A Preferred Stock and the issuance of the related Receipts.

Section 3.4. Warranty as to Depository Shares.

The Corporation hereby represents and warrants that the Receipts, when issued, will represent legal and valid interests in the Series A Preferred Stock. Such representation and warranty shall survive the deposit of the Series A Preferred Stock and the related issuance of the Receipts.

**ARTICLE IV**  
**THE DEPOSITED SECURITIES; NOTICES**

Section 4.1. Cash Distributions.

Whenever the Depositary shall receive any cash dividend or other cash distribution on the Series A Preferred Stock, the Depositary shall, subject to Section 3.1 and Section 3.2, and if received, upon the written instructions from the Corporation, distribute to Record Holders of Receipts on the record date fixed pursuant to Section 4.4 such amounts of such dividend or distribution as are, as nearly as practicable, in proportion to the respective numbers of Depositary Shares evidenced by the Receipts held by such Holders; provided, however, that in case the Corporation or the Depositary shall be required to withhold and shall withhold from any cash dividend or other cash distribution in respect of the Series A Preferred Stock an amount on account of taxes, the amount made available for distribution or distributed in respect of Depositary Shares shall be reduced accordingly. In the event that the calculation of any such cash dividend or other cash distribution to be paid to any Record Holder on the aggregate number of Depositary Shares held by such Record Holder results in an amount that is a fraction of a cent and that fraction of a cent is equal to or greater than \$0.005, the amount the Depositary shall distribute to such Record Holder shall be rounded up to the next highest whole cent; otherwise, such fractional amount shall be disregarded by the Depositary and shall be added to and be treated as part of the next succeeding distribution. Each Holder of a Receipt shall provide the Depositary with its certified tax identification number on a properly completed Form W-8 or W-9, as may be applicable. Each Holder of a Receipt acknowledges that, in the event of non-compliance with the preceding sentence, the Internal Revenue Code of 1986, as amended, may require withholding by the Depositary of a portion of any of the distributions to be made hereunder.

Section 4.2. Distributions Other than Cash, Rights, Preferences or Privileges.

Whenever the Depositary shall receive any distribution other than cash, rights, preferences or privileges upon the Series A Preferred Stock, the Depositary shall, subject to Section 3.1 and Section 3.2, distribute to Record Holders of Receipts on the record date fixed pursuant to Section 4.4, such amounts of the securities or property received by it as are, as nearly as practicable, in proportion to the respective number of Depositary Shares evidenced by such Receipts held by such Holders, in any manner that the Depositary (with the approval of the Corporation) may deem equitable and practicable for accomplishing such distribution. If in the opinion of the Depositary and the Corporation, such distribution cannot be made proportionately among such Record Holders, or if for any other reason (including any requirement that the Corporation or the Depositary withhold an amount on account of taxes or charges) the Depositary deems, after consultation with the Corporation, such distribution not to be feasible, the Depositary may, with the approval of the Corporation, adopt such method as it deems equitable and practicable for the purpose of effecting such distribution, including the sale (at public or private sale) of the securities or property thus received, or any part thereof, in a commercially reasonable manner. The net proceeds of any such sale shall, subject to Section 3.1 and Section 3.2, be distributed or made available for distribution, as the case may be, by the Depositary to Record Holders of Receipts as provided by Section 4.1 in the case of a distribution received in cash. The Corporation shall not make any distribution of securities or property (other than cash) to the Depositary and the Depositary shall not make any distribution of securities or property (other than cash) to the Holders of Receipts unless the Corporation shall have provided an opinion of counsel, dated as of or prior to the date of such distribution, stating that such securities or property have been registered under the Securities Act or do not need to be so registered in connection with such distributions.

#### Section 4.3. Subscription Rights, Preferences or Privileges.

If the Corporation shall at any time offer or cause to be offered to the Persons in whose names the Series A Preferred Stock is recorded on the books of the Corporation any rights, preferences or privileges to subscribe for or to purchase any securities or any rights, preferences or privileges of any other nature, such rights, preferences or privileges shall in each such instance be communicated to the Depositary and made available by the Depositary to the Record Holders of Receipts in such manner as the Corporation shall reasonably direct, either by the issue to such Record Holders of warrants representing such rights, preferences or privileges or by such other method as may be approved by the Depositary in its discretion with the approval of the Corporation; provided, however, that (i) if at the time of issue or offer of any such rights, preferences or privileges the Depositary or the Corporation determines that it is not lawful or (after consultation with the Depositary) not feasible to make such rights, preferences or privileges available to Holders of Receipts by the issue of warrants or otherwise, or (ii) if and to the extent so instructed by Holders of Receipts who do not desire to exercise such rights, preferences or privileges, then the Depositary, in its discretion (with the acknowledgement of the Corporation, in any case where the Depositary has determined that it is not feasible to make such rights, preferences or privileges available), may, if applicable laws or the terms of such rights, preferences or privileges permit such transfer, sell such rights, preferences or privileges at public or private sale, at such place or places and upon such terms as it may deem proper. The net proceeds of any such sale shall be delivered to the Depositary and, if received, upon the written instructions of the Corporation and, subject to Section 3.1 and Section 3.2, be distributed by the Depositary to the Record Holders of Receipts entitled thereto as provided by Section 4.1 in the case of a distribution received in cash.

The Corporation shall notify the Depositary whether registration under the Securities Act of the securities to which any rights, preferences or privileges relate is required in order for Holders of Receipts to be offered or sold the securities to which such rights, preferences or privileges relate, and the Corporation agrees with the Depositary that it will file promptly a registration statement pursuant to the Securities Act with respect to such rights, preferences or privileges and securities and use its best efforts and take all steps available to it to cause such registration statement to become effective sufficiently in advance of the expiration of such rights, preferences or privileges in compliance with the Securities Act to enable such Holders to exercise such rights, preferences or privileges. In no event shall the Depositary make available to the Holders of Receipts any right, preference or privilege to subscribe for or to purchase any securities unless and until such registration statement shall have become effective or the Corporation shall have provided to the Depositary an opinion of counsel stating that the offering and sale of such securities to the Holders are exempt from registration under the provisions of the Securities Act.

The Corporation shall notify the Depository whether any other action under the laws of any jurisdiction or any governmental or administrative authorization, consent or permit is required in order for such rights, preferences or privileges to be made available to Holders of Receipts, and the Corporation agrees with the Depository that the Corporation will use its reasonable best efforts to take such action or obtain such authorization, consent or permit sufficiently in advance of the expiration of such rights, preferences or privileges to enable such Holders to exercise such rights, preferences or privileges.

The Depository will not be deemed to have any knowledge of any item for which it is supposed to receive notification under any section of this Agreement unless and until it has received such notification in writing.

#### Section 4.4. Notice of Dividends, etc.; Fixing Record Date for Holders of Receipts.

Whenever any cash dividend or other cash distribution shall become payable or any distribution other than cash shall be made, or if rights, preferences or privileges shall at any time be offered, with respect to the Series A Preferred Stock, or whenever the Depository shall receive notice of any meeting at which holders of the Series A Preferred Stock are entitled to vote or of which holders of the Series A Preferred Stock are entitled to notice, or whenever the Depository and the Corporation shall decide it is appropriate, the Depository shall in each such instance fix a record date (which shall be the same date as the record date fixed by the Corporation with respect to or otherwise in accordance with the terms of the Series A Preferred Stock) for the determination of the Holders of Receipts who shall be entitled to receive such dividend, distribution, rights, preferences or privileges or the net proceeds of the sale thereof, or to give instructions for the exercise of voting rights at any such meeting, or who shall be entitled to notice of such meeting or for any other appropriate reasons.

#### Section 4.5. Voting Rights.

Subject to the Statement of Resolution, upon receipt of notice from the Corporation of any meeting at which the holders of the Series A Preferred Stock are entitled to vote, the Depository shall, if requested in writing and provided with all necessary information and documents, as soon as practicable thereafter, mail or transmit by such other method approved by the Depository, in its reasonable discretion, to the Record Holders of Receipts, as determined on the record date set forth in Section 4.4, a notice prepared by the Corporation which shall contain (i) such information as is contained in such notice of meeting, (ii) a statement that the Holders of Receipts at the close of business on a specified record date fixed pursuant to Section 4.4 may, subject to any applicable restrictions, instruct the Depository as to the exercise of the voting rights pertaining to the shares of Series A Preferred Stock represented by their respective Depository Shares (including an express indication that instructions may be given to the Depository to give a discretionary proxy to a Person designated by the Corporation), and (iii) a brief statement as to the manner in which such instructions may be given. Upon the written request of the Holders of Receipts on the relevant record date, the Depository shall endeavor insofar as practicable to vote or cause to be voted, in accordance with the instructions set forth in such requests, the maximum number of whole shares of Series A Preferred Stock represented by the Depository Shares evidenced by all Receipts as to which any particular voting instructions are received. The Corporation hereby agrees to take all reasonable action which may be deemed necessary by the Depository in order to enable the Depository to vote such Series A Preferred Stock or cause such Series A Preferred Stock to be voted. In the absence of specific instructions from the Holder of a Receipt, the Depository will not vote (but, at its discretion, may appear at any meeting with respect to such Series A Preferred Stock unless directed to the contrary by the Holders of all the Receipts) to the extent of the Series A Preferred Stock represented by the Depository Shares evidenced by such Receipt. The Depository shall not be required to exercise any discretion in voting any shares of the Series A Preferred Stock represented by the Depository Shares evidenced by such Receipt.

#### Section 4.6. Changes Affecting Deposited Securities and Reclassifications, Recapitalizations, etc.

Upon any change in par or stated value, split-up, combination or any other reclassification of the Series A Preferred Stock, subject to the Statement of Resolution, or upon any recapitalization, reorganization, merger or consolidation affecting the Corporation or to which it is a party, the Depositary shall, upon the written instructions of the Corporation setting forth any adjustment, (i) make such adjustments as are certified by the Corporation in the fraction of an interest represented by one Depositary Share in one share of Series A Preferred Stock and in the ratio of the redemption price per Depositary Share to the redemption price per share of Series A Preferred Stock, in each case as may be necessary fully to reflect the effects of such change in par or stated value, split-up, combination or other reclassification of the Series A Preferred Stock, or of such recapitalization, reorganization, merger or consolidation, as stated in such instructions and (ii) treat any securities or property (including cash) which shall be received by the Depositary in exchange for or upon conversion of or in respect of the Series A Preferred Stock as new deposited securities or property so received in exchange for or upon conversion or in respect of such Series A Preferred Stock. In any such case the Depositary shall, upon receipt of the written instructions of the Corporation, execute and deliver additional Receipts or may call for the surrender of all outstanding Receipts to be exchanged for new Receipts specifically describing such new deposited securities or property. Anything to the contrary herein notwithstanding, Holders of Receipts shall have the right from and after the effective date of any such change in par or stated value, split-up, combination or other reclassification of the Series A Preferred Stock or any such recapitalization, reorganization, merger or consolidation to surrender such Receipts to the Depositary with instructions to convert, exchange or surrender the Series A Preferred Stock represented thereby only into or for, as the case may be, the kind and amount of shares and other securities and property and cash into which the Series A Preferred Stock represented by such Receipts might have been converted or for which such Series A Preferred Stock might have been exchanged or surrendered immediately prior to the effective date of such transaction; provided, that the Depositary shall not have any obligations under this sentence unless and until it has received written instructions from the Corporation.

#### Section 4.7. Delivery of Reports.

The Depositary shall make available for inspection by Holders of Receipts at the Depositary's Office and at such other places as it may from time to time deem advisable during normal business hours any reports and communications received from the Corporation, which are received by the Depositary and which the Corporation is required to furnish to the holders of the Series A Preferred Stock. In addition, the Depositary shall, at the expense of the Corporation, transmit, upon the request of the Corporation, certain notices and reports to the Holders of Receipts as provided in Section 5.6.

Section 4.8. Lists of Receipt Holders.

Reasonably promptly upon request from time to time by the Corporation, at the sole expense of the Corporation, the Registrar shall furnish to it a list, as of the most recent practicable date, of the names, addresses and holdings of Depository Shares of all registered Holders of Receipts.

Section 4.9. Withholding.

The Depository, on its own behalf and on behalf of the Corporation, will comply with all applicable certification, information reporting and withholding (including “backup” withholding) requirements imposed by applicable tax laws, regulations or administrative practice with respect to (a) any payments made with respect to the Depository Shares and Series A Preferred Stock or (b) the issuance, delivery, holding, transfer or exercise of rights under the Receipts or the Depository Shares. Such compliance shall include, without limitation, the preparation and timely filing of required returns and the timely payment of all amounts required to be withheld to the appropriate taxing authority or its designated agent.

The Depository shall comply with any written direction received from the Corporation with respect to the application of such requirements to particular payments or holders or in other particular circumstances, and may for purposes of this Agreement rely on and shall not be liable and shall be indemnified by the Corporation for any action taken, suffered or omitted by the Depository in reliance upon any such written instructions from the Corporation in accordance with the provisions of Section 5.4 hereof.

The Depository shall maintain all appropriate records documenting compliance with such requirements, and shall make such records available on request to the Corporation or to its authorized representatives during the term of this Deposit Agreement.

**ARTICLE V  
THE DEPOSITARY, THE DEPOSITARY’S AGENTS,  
THE REGISTRAR AND THE CORPORATION**

Section 5.1. Appointment of the Depository.

The Corporation hereby appoints Computershare and the Trust Company, collectively, to act as Depository in accordance with the express terms and conditions hereof (and no implied terms or conditions), and each of Computershare and the Trust Company accepts this appointment. Depository is engaged in an independent business and will perform its obligations under this Deposit Agreement as an agent of the Corporation.

Section 5.2. Maintenance of Offices, Agencies and Transfer Books by the Depository; Registrar.

Upon execution of this Deposit Agreement, the Depository shall maintain at the Depository’s Office, facilities for the execution and delivery, registration and registration of transfer, surrender and exchange of Receipts, and at the offices of the Depository’s Agents, if any, facilities for the delivery, registration of transfer, surrender and exchange of Receipts, all in accordance with the provisions of this Deposit Agreement.

The Depositary shall keep books at the Depositary's Office for the registration and registration of transfer of Receipts. Upon direction from the Corporation and with reasonable notice to the Depositary, the Registrar shall open its books for inspection by the Record Holders of Receipts; provided that any such Record Holder requesting to exercise such right shall certify to the Depositary that such inspection shall be for a proper purpose reasonably related to such Person's interest as an owner of Depositary Shares evidenced by the Receipts; provided, further, that (i) such inspection shall be performed not more than once every twelve (12) months for each such Record Holder; (ii) such inspection is carried out at such Record Holder's cost during the Depositary's business hours; (iii) such Record Holder and/or its agents shall not cause any disruption to the Depositary's business; (iv) such Record Holder or its agent shall only be given access to such Record Holder's information and not to data of any third party or other Record Holder; and (v) such Record Holder and/or its agent shall not copy or remove any materials from the premises where the inspection is performed.

The Depositary or Registrar may close such books, at any time or from time to time, when deemed expedient by it in connection with the performance of its duties hereunder, or deemed necessary or advisable by the Depositary, the Registrar, any Depositary's Agent or the Corporation because of any requirement of law or of any government, governmental body or commission, stock exchange or any applicable self-regulatory body.

If the Receipts or the Depositary Shares evidenced thereby or the Series A Preferred Stock represented by such Depositary Shares shall be listed on one or more national securities exchanges, the Depositary may, with the written approval of the Corporation, appoint a Registrar (acceptable to the Corporation) for registration of the Receipts or Depositary Shares in accordance with any requirements of such exchange. Such Registrar (which may be the Depositary if so permitted by the requirements of any such exchange) may be removed and a substitute registrar appointed by the Depositary upon the request or with the approval of the Corporation. If the Receipts, Depositary Shares or the Series A Preferred Stock are listed on one or more other securities exchanges, the Depositary will, at the written request and expense of the Corporation, arrange such facilities for the delivery, registration, registration of transfer, surrender and exchange of such Receipts, Depositary Shares or Series A Preferred Stock as may be required by law or applicable securities exchange regulation.

Section 5.3. Prevention of or Delay in Performance by the Depositary, the Depositary's Agents, the Registrar or the Corporation.

Neither the Depositary nor any Depositary's Agent nor any Registrar nor the Corporation, as the case may be, shall incur any liability to any Holder of Receipt if by reason of any provision of any present or future law, or regulation thereunder, of the United States of America or of any other governmental authority or, in the case of the Depositary, the Depositary's Agent or the Registrar, as the case may be, by reason of any provision, present or future, of the Corporation's Amended and Restated Certificate of Incorporation (including the Statement of Resolution) or by reason of any act of God or war or other circumstance beyond the control of the relevant party, the Depositary, the Depositary's Agent, the Registrar or the Corporation, as the case may be, shall be prevented, delayed, or forbidden from, or subjected to any penalty on account of, doing or performing any act or thing which the terms of this Deposit Agreement provide shall be done or performed; nor shall the Depositary, any Depositary's Agent, any Registrar or the Corporation, as the case may be, incur liability to any Holder of a Receipt (i) by reason of any nonperformance or delay, caused as aforesaid, in the performance of any act or thing which the terms of this Deposit Agreement shall provide shall or may be done or performed, or (ii) by reason of any exercise of, or failure to exercise, any discretion provided for in this Deposit Agreement except as otherwise explicitly set forth in this Deposit Agreement.

Section 5.4. Obligations of the Depositary, the Depositary's Agents, the Registrar, the Transfer Agent and the Corporation.

Neither the Depositary nor any Depositary's Agent nor any Registrar, any Transfer Agent nor the Corporation, as the case may be, assumes any obligation or shall be subject to any liability under this Deposit Agreement to Holders of Receipts or to any other Person (other than to the Corporation in accordance with the last sentence of this paragraph below) other than for its gross negligence, willful misconduct or bad faith (each as finally determined by a non-appealable judgment of a court of competent jurisdiction). Notwithstanding anything in this Deposit Agreement to the contrary, the aggregate liability of the Depositary, any Depositary's Agent or the Registrar or Transfer Agent, as the case may be, to the Corporation under this Deposit Agreement, with respect to, arising from or arising in connection with this Deposit Agreement, or from all services provided or omitted to be provided under this Deposit Agreement whether in contract, tort, or otherwise, is limited to, and shall not exceed, the lesser of: (i) the amount of actual damages incurred by the Corporation and (ii) an amount equal to the amounts paid hereunder by the Corporation to the Depositary as fees and charges (but not including reimbursable expenses) during the twelve (12) month period (or such lesser period if the services provided hereunder have been provided for less than twelve (12) months) immediately preceding the date of occurrence of the event upon which a claim is asserted, less any amounts previously paid by the Depositary in satisfaction or settlement of other claims applicable to the services provided hereunder giving rise to such claim or cause of action, regardless of the basis on which the Corporation is entitled to claim damages (including, without limitation, breach, negligence, misrepresentation, or other contract claim) and shall constitute the Corporation's sole monetary remedy.

**NOTWITHSTANDING ANYTHING IN THIS DEPOSIT AGREEMENT TO THE CONTRARY, NEITHER THE DEPOSITARY, NOR THE DEPOSITARY'S AGENT NOR ANY REGISTRAR NOR THE TRANSFER AGENT NOR THE CORPORATION, AS THE CASE MAY BE, SHALL BE LIABLE IN ANY EVENT FOR SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY KIND WHATSOEVER (INCLUDING BUT NOT LIMITED TO LOST PROFITS), EVEN IF THEY HAVE BEEN ADVISED OF THE LIKELIHOOD OF SUCH LOSS OR DAMAGE AND REGARDLESS OF THE FORM OF ACTION.**

Neither the Depositary nor any Depositary's Agent nor any Transfer Agent nor the Registrar nor the Corporation, as the case may be, shall be under any obligation to appear in, prosecute or defend any action, suit or other proceeding in respect of the Series A Preferred Stock, the Depositary Shares or the Receipts which, in its opinion, may involve it in expense or liability unless indemnity reasonably satisfactory to it against all expense and liability be furnished as often as may be required.

Neither the Depositary nor any Depositary's Agent nor any Registrar nor the Transfer Agent nor the Corporation, as the case may be, shall be liable for any action or any failure to act by it in reliance upon the advice or opinion of legal counsel (who may be legal counsel for the Company or the Depositary) or accountants, or information from any Person presenting Series A Preferred Stock for deposit, any Holder of a Receipt or any other Person believed by it, in the absence of bad faith, gross negligence, or willful misconduct (each as determined by a final non-appealable judgment of a court of competent jurisdiction), to be competent to give such information. The Depositary, any Depositary's Agent, any Registrar, any Transfer Agent and the Corporation, as the case may be, may each rely and shall each be protected in acting upon or omitting to act upon any written notice, request, direction or other document believed by it to be genuine and to have been signed or presented by the proper party or parties.

The Depositary, the Depositary's Agent, any Registrar or Transfer Agent, as the case may be, shall not be responsible for any failure to carry out any instruction to vote any of the shares of the Series A Preferred Stock or for the manner or effect of any such vote made, as long as any such action or non-action is not taken with gross negligence, willful misconduct, or in bad faith (each as determined in a final, non-appealable judgment of a court of competent jurisdiction). The Depositary undertakes, and any Depositary's Agent, Registrar and any Transfer Agent, as the case may be, shall be required to undertake, to perform such duties and only such duties as are specifically set forth in this Deposit Agreement, and no implied covenants or obligations shall be read into this Deposit Agreement against the Depositary or any Depositary's Agent, Transfer Agent or Registrar.

The Depositary, its parent, Affiliates, or subsidiaries, and Depositary's Agents, and any Transfer Agent or Registrar, as the case may be, may own and deal in any class of securities of the Corporation and its Affiliates and in Receipts or Depositary Shares or become pecuniarily interested in any transaction in which the Corporation or its Affiliates may be interested or contract with or lend money to or otherwise act as fully or as freely as if it were not the Depositary, the parent, Affiliate or subsidiary of the Depositary or the Depositary's Agent or Transfer Agent or Registrar hereunder. The Depositary may also act as transfer agent, trustee, or registrar of any of the securities of the Corporation and its Affiliates or act in any other capacity for the Corporation or its Affiliates.

The Depositary shall not be under any liability for interest on any monies at any time received by it pursuant to any of the provisions of this Deposit Agreement or of the Receipts, the Depositary Shares or the Series A Preferred Stock nor shall it be obligated to segregate such monies from other monies held by it, except as required by law. The Depositary shall not be responsible for advancing funds on behalf of the Corporation and shall have no duty or obligation to make any payments if it has not timely received sufficient funds to make timely payments.

In the event the Depositary, the Depositary's Agents, any Transfer Agent or Registrar, as the case may be, believes any ambiguity or uncertainty exists hereunder or in any notice, instruction, direction, request or other communication, paper or document received by the Depositary, the Depositary's Agents, any Transfer Agent or Registrar hereunder, or in the administration of any of the provisions of this Deposit Agreement, the Depositary, the Depositary's Agents, any Transfer Agent or Registrar shall deem it necessary or desirable that a matter be proved or established prior to taking, omitting or suffering to take any action hereunder, the Depositary, the Depositary's Agents, any Transfer Agent or Registrar may, in its sole discretion upon providing written notice to the Corporation, refrain from taking any action and the Depositary, the Depositary's Agents, any Transfer Agent or Registrar shall be fully protected and shall not be liable in any way to the Corporation, any Holders of Receipts or any other Person or entity for refraining from taking such action, unless the Depositary, the Depositary's Agents, any Transfer Agent or Registrar receives written instructions or a certificate signed by a duly authorized officer of the Corporation which eliminates such ambiguity or uncertainty to the satisfaction of the Depositary or which proves or establishes the applicable matter to the satisfaction of the Depositary, the Depositary's Agents, any Transfer Agent or Registrar. Such written instructions shall be full and complete authorization to the Depositary, the Depositary's Agents, any Transfer Agent or Registrar, as the case may be, and the Depositary, the Depositary's Agents, any Transfer Agent or Registrar shall incur no liability for or in respect of any action taken, suffered or omitted by it under the provisions of this Deposit Agreement in reliance upon such written instructions.

In the event the Depositary, the Depositary's Agent, the Registrar or the Transfer Agent, as the case may be, shall receive conflicting claims, requests or instructions from any Holders of Receipts, on the one hand, and the Corporation, on the other hand, the Depositary, the Depositary's Agent, the Registrar or the Transfer Agent, as the case may be, shall be entitled to act on such claims, requests or instructions received from the Corporation, and shall incur no liability and shall be entitled to the full indemnification set forth in Section 5.7 hereof in connection with any action so taken.

From time to time, the Corporation may provide the Depositary or any Registrar with instructions concerning the services performed by the Depositary under this Deposit Agreement. In addition, at any time, the Depositary or any Registrar may apply to any officer of the Corporation for instruction, and may consult with legal counsel for the Depositary or any Registrar or the Corporation with respect to any matter arising in connection with the services to be performed by the Depositary or any Registrar under this Deposit Agreement. The Depositary or such Registrar and its respective agents and subcontractors shall not be liable and shall be indemnified by the Corporation for any action taken, suffered or omitted by the Depositary or such Registrar in reliance upon any instructions from the Corporation or its agents or advisors. The Depositary or any Registrar shall not be held to have notice of any change of authority of any person, until receipt of written notice thereof from the Corporation.

It is intended that the none of the Depositary, any Depositary's Agent, Registrar, or Transfer Agent as the case may be, shall be deemed to be an "issuer" of the securities under the federal securities laws or applicable state securities laws, it being expressly understood and agreed that the Depositary, any Depositary's Agent, Registrar or Transfer Agent are acting only in a ministerial capacity as Depositary, Depositary's Agent, Registrar or Transfer Agent as applicable, for the deposited Series A Preferred Stock. The Depositary will not be under any duty or responsibility to ensure compliance with any applicable federal or state securities laws in connection with the issuance, transfer or exchange of the Receipts, the shares of the Series A Preferred Stock or Depositary Shares; provided, however, that the Depositary agrees to comply with all information reporting and withholding requirements required to be complied by it under law or this Deposit Agreement as Depositary.

Neither the Depositary (or its officers, directors, employees or agents), any Depositary's Agent nor any Registrar or any Transfer Agent makes any representation or has any responsibility as to the validity of any registration statement pursuant to which the Depositary Shares may be registered under the Securities Act, the deposited Series A Preferred Stock, the Depositary Shares, the Receipts (except its countersignature thereon) or any instruments referred to therein or herein, or as to the correctness of any statement made in any such registration statement or herein; provided, however, that the Depositary is responsible for its representations in this Deposit Agreement.

The Depositary assumes no responsibility for the correctness of the description that appears in the Receipts. Notwithstanding any other provision herein or in the Receipts, the Depositary makes no warranties or representations as to the validity or genuineness of any shares of the Series A Preferred Stock at any time deposited with the Depositary hereunder or of the Depositary Shares, as to the validity or sufficiency of this Deposit Agreement, as to the value of the Depositary Shares or as to any right, title or interest of the record holders of Receipts in and to the Depositary Shares. The Depositary shall not be accountable for the use or application by the Corporation of the Depositary Shares or the Receipts or the proceeds thereof.

The Depositary may rely on and be fully authorized and protected in acting or failing to act upon (a) any Signature Guarantee or guaranty of signature by an "eligible guarantor institution" that is a member or participant in the Securities Transfer Agents Medallion Program or other comparable "signature guarantee program" or insurance program in addition to, or in substitution for, the foregoing; or (b) any law, act, regulation or any interpretation of the same.

The Depositary may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorneys or agents, and the Depositary shall not be answerable or accountable for any act, omission, default, neglect or misconduct of any such attorneys or agents or for any loss to the Corporation, to the holders of the Receipts or any other Person resulting from any such act, omission, default, neglect or misconduct, absent gross negligence, willful misconduct or bad faith (each as determined by a final, non-appealable judgment of a court of competent jurisdiction).

The Depositary, Depositary's Agent, any Registrar, and any Transfer Agent hereunder:

(i) shall have no duties or obligations other than those specifically set forth herein (and no implied duties or obligations), or as may subsequently be agreed to in writing by the parties;

(ii) shall have no obligation to make payment hereunder unless the Corporation shall have provided the necessary federal or other immediately available funds or securities or property, as the case may be, to pay in full, amounts due and payable with respect thereto;

(iii) shall not be obligated to take any legal or other action hereunder; if, however, the Depositary, Depositary's Agent, any Registrar, and any Transfer Agent determines to take any legal or other action hereunder except as expressly set forth herein, and, where the taking of such action might in such Person's judgment subject or expose it to any expense or liability, it shall not be required to act unless it shall have been furnished with an indemnity satisfactory to it;

(iv) may rely on and shall be fully authorized and protected by the Corporation in acting or failing to act upon any certificate, instrument, opinion, notice, letter, telegram, telex, facsimile transmission or other document or security delivered to the Depositary and believed by the Depositary to be genuine and to have been signed by the proper party or parties, and shall have no responsibility for determining the accuracy thereof;

(v) may rely on and shall be fully authorized and protected by the Corporation in acting or failing to act upon the written, telephonic, electronic and oral instructions, with respect to any matter relating to the Depositary's actions as Depositary, Transfer Agent or Registrar covered by this Deposit Agreement (or supplementing or qualifying any such actions) of officers of the Corporation;

(vi) shall not be called upon at any time to advise any Person with respect to the shares of the Series A Preferred Stock or Receipts;

(vii) shall not be liable or responsible for any recital or statement contained in any documents relating hereto or the shares of the Series A Preferred Stock, Depositary Shares or Receipts;

(viii) shall not be liable to any Holder for any property that has been delivered to a public official pursuant to applicable abandoned property law; and

(ix) shall not be liable in any respect on account of the identity, authority or rights of the parties (other than with respect to the Depositary) executing or delivering or purporting to execute or deliver this Deposit Agreement or any documents or papers deposited or called for under this Deposit Agreement.

The obligations of the Corporation and the rights of Depositary, the Depositary's Agent, Transfer Agent or Registrar set forth in this Section 5.4 shall survive the replacement, removal or resignation of the Depositary, Registrar, Transfer Agent or Depositary's Agent or termination of this Deposit Agreement.

Section 5.5. Resignation and Removal of the Depositary; Appointment of Successor Depositary.

The Depositary may at any time resign as Depositary hereunder by delivering notice of its election to do so to the Corporation, such resignation to take effect upon the appointment of a successor Depositary and its acceptance of such appointment as hereinafter provided.

The Depositary may at any time be removed by the Corporation by at least thirty (30) days prior written notice of such removal delivered to the Depositary, such removal to take effect upon the appointment of a successor Depositary.

In case at any time, the Depositary acting hereunder shall resign or be removed, the Corporation shall, within 60 days after the delivery of the notice of resignation or removal, as the case may be, appoint a successor Depositary, which shall be (i) a Person having its principal office in the United States of America and having a combined capital and surplus, along with its Affiliates, of at least \$50,000,000 or (ii) an Affiliate of any such Person. In the event of such removal or resignation, the Corporation will appoint a successor depositary and inform the Depositary of the name and address of any successor depositary so appointed, provided that no failure by the Corporation to appoint such a successor depositary shall affect the termination of this Deposit Agreement or the discharge of the Depositary as depositary hereunder. Upon payment of all outstanding fees and expenses hereunder, at the expense of the Corporation, the Depositary shall promptly forward to the successor depositary or its designee, any shares of stock held by it and any certificates, letters, notices and other document that the Depositary may receive after its appointment has so terminated.

If no successor Depositary shall have been so appointed and have accepted appointment within 60 days after delivery of such notice, the resigning or removed Depositary may petition any court of competent jurisdiction for the appointment of a successor Depositary. Every successor Depositary shall execute and deliver to its predecessor and to the Corporation an instrument in writing accepting its appointment hereunder, and thereupon such successor Depositary, without any further act or deed, shall become fully vested with all the rights, powers, duties and obligations of its predecessor and for all purposes shall be the Depositary under this Deposit Agreement, and such predecessor, upon payment of all sums due it and on the written request of the Corporation, shall promptly execute and deliver an instrument transferring to such successor all rights and powers of such predecessor hereunder, shall duly assign, transfer and deliver all right, title and interest in the Series A Preferred Stock and any moneys or property held hereunder to such successor, and shall deliver to such successor a list of the Record Holders of all outstanding Receipts and such records, books and other information in its possession relating thereto. Any successor Depositary shall promptly mail or transmit by such other method approved by such successor Depositary, in its reasonable discretion, notice of its appointment to the Record Holders of Receipts.

Any Person into or with which the Depositary may be merged, consolidated or converted, or any Person to which all or a substantial part of the assets of the Depositary may be transferred or which succeeds to the shareholder services business of the Depositary shall be the successor of the Depositary without the execution or filing of any document or any further act, and notice thereof shall not be required hereunder. Such successor Depositary may authenticate the Receipts in the name of the predecessor Depositary or its own name as successor Depositary.

The removal or resignation of the Depositary shall automatically be deemed to be a removal of the Depositary as Registrar and Transfer Agent herein without any further act or deed.

#### Section 5.6. Corporate Notices and Reports.

The Corporation agrees that it will deliver to the Depositary, and the Depositary will, upon the Corporation's written instruction, promptly after receipt of all necessary information and documents, transmit to the Record Holders of Receipts, in each case at the addresses recorded in the Depositary's or Registrar's books, copies of all notices and reports (including without limitation financial statements) required by law, by the rules of any national securities exchange upon which the Series A Preferred Stock, the Depositary Shares or the Receipts are listed or by the Corporation's Restated Certificate of Incorporation, as amended (including the Statement of Resolution), to be furnished to the Record Holders of Receipts. Such transmission will be at the Corporation's expense and the Corporation will provide the Depositary with such number of copies of such documents as the Depositary may reasonably request. In addition, the Depositary will transmit to the Record Holders of Receipts at the Corporation's expense such other documents as may be requested by the Corporation.

#### Section 5.7. Indemnification by the Corporation.

Notwithstanding Section 5.4 to the contrary, the Corporation shall indemnify the Depositary, any Depositary's Agent and any Registrar and any Transfer Agent (including each of their officers, directors, agents and employees) against, and hold each of them harmless from and against, any fee, loss, claim, damage, cost, penalty, fine, judgment, liability or expense (including the reasonable costs and expenses of its legal counsel) which may arise out of acts taken, suffered or omitted to be taken in connection with its acting as Depositary, Depositary's Agent, Registrar or Transfer Agent, respectively, under this Deposit Agreement (including, without limitation, the enforcement of this Deposit Agreement) and the Receipts by the Depositary, any Registrar or any of their respective agents (including any Depositary's Agent) and any transactions or documents contemplated hereby, except for any such fee, loss, claim, damage, cost, penalty, fine, judgment, liability or expense arising out of gross negligence, willful misconduct, fraud or bad faith (each as finally determined by a non-appealable judgment of a court of competent jurisdiction) on the respective parts of any such Person or Persons. The obligations of the Corporation and the rights of the Depositary set forth in this Section 5.7 shall survive the replacement, removal, resignation or any succession of any Depositary, Registrar, Transfer Agent or Depositary's Agent or termination of this Deposit Agreement.

#### Section 5.8. Fees, Charges and Expenses.

The Corporation agrees promptly to pay the Depositary the compensation to be agreed upon with the Corporation for all services rendered by the Depositary, Depositary's Agent, Registrar and Transfer Agent hereunder and to reimburse the Depositary for its reasonable out-of-pocket expenses (including reasonable counsel fees and expenses) incurred by the Depositary, Depositary's Agent, Registrar and Transfer Agent in connection with the services rendered by such Depositary, Depositary's Agent, Registrar and Transfer Agent, as the case may be, hereunder. The Corporation shall pay all charges of the Depositary in connection with the initial deposit of the Series A Preferred Stock and the initial issuance of the Depositary Shares, all withdrawals of shares of Series A Preferred Stock by owners of Depositary Shares, and any redemption or exchange of the Series A Preferred Stock at the option of the Corporation. The Corporation shall pay all transfer and other taxes and charges arising solely from the existence of the depositary arrangements. All other transfer and other taxes and charges shall be at the expense of Holders of Depositary Shares evidenced by Receipts. If, at the request of a Holder of Receipts, the Depositary incurs charges or expenses for which the Corporation is not otherwise liable hereunder, such Holder will be liable for such charges and expenses; provided, however, that the Depositary may, at its sole option, require a Holder of a Receipt to prepay the Depositary any charge or expense the Depositary has been asked to incur at the request of such Holder of Receipts. The Depositary shall present its statement for charges and expenses to the Corporation at such intervals as the Corporation and the Depositary may agree.

#### Section 5.9. Corporate Existence and Authority of the Depositary.

The Depositary hereby represents and warrants that it: (i) has been duly incorporated or formed and is validly existing in good standing under the laws of the jurisdiction of its formation; (ii) has full corporate power and authority and possesses all governmental or other powers, franchises, licenses, permits, authorizations and approvals necessary to enable it to own, lease or otherwise hold its properties and assets and to carry on its business as presently conducted; (iii) has been duly qualified as a foreign entity for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification, or is subject to no material liability or disability by reason of the failure to be so qualified in any such jurisdiction; and (iv) Trust Company is a bank or trust company having its principal office in the United States of America and having a combined capital and surplus, including that of its affiliates, of at least \$150,000,000. The Depositary hereby agrees to promptly inform the Corporation in the event that any of the statements in the foregoing sentence cease to be true and complete in all material respects.

This Deposit Agreement has been duly authorized, executed and delivered by the Depositary and constitutes a legal, valid and binding obligation of the Depositary, enforceable against the Depositary in accordance with its terms and this Deposit Agreement will be maintained continuously as part of the Depositary's official records, in accordance with law and its records management policy. The Depositary hereby agrees to perform its obligations under this Deposit Agreement with the diligent care of a professional provider of such services, in a timely manner and in conformance with all applicable laws, rules and regulations.

**ARTICLE VI  
AMENDMENT AND TERMINATION**

Section 6.1. Amendment.

The form of the Receipts and any provisions of this Deposit Agreement may at any time and from time to time be amended by agreement between the Corporation and the Depositary in any respect which they may deem necessary or desirable; provided, however, that no such amendment (other than any change in the fees of any Depositary, Depositary's Agent, Transfer Agent, or Registrar, as the case may be) which shall materially and adversely alter the rights of the Holders of Receipts shall be effective against the Holders of Receipts unless such amendment shall have been approved by the Holders of Receipts representing in the aggregate at least a majority of the Depositary Shares then outstanding. Every Holder of an outstanding Receipt at the time any such amendment becomes effective shall be deemed, by continuing to hold such Receipt, to consent and agree to such amendment and to be bound by the Deposit Agreement as amended thereby. In no event shall any amendment impair the right, subject to the provisions of Section 2.5 and Section 2.6 and Article III, of any owner of Depositary Shares to surrender any Receipt evidencing such Depositary Shares to the Depositary with instructions to deliver to the Holder the Series A Preferred Stock and all money and other property, if any, represented thereby, except in order to comply with mandatory provisions of applicable law or the rules and regulations of any governmental body, agency or commission, or applicable securities exchange. As a condition precedent to the Depositary's execution of any amendment, the Corporation shall deliver to the Depositary a certificate from a duly authorized officer of the Corporation that states that the proposed amendment is in compliance with the terms of this Section 6.1. No amendment to this Deposit Agreement shall be effective unless duly executed by the Depositary and the Corporation.

Section 6.2. Termination.

This Deposit Agreement may be terminated by the Corporation at any time upon not less than 60 days prior written notice to the Depositary, in which case, at least 30 days prior to the date fixed in such notice for such termination, the Depositary (at the Corporation's expense) will mail notice of such termination to the record Holders of all Receipts then outstanding. If any Receipts shall remain outstanding after the date of termination of this Deposit Agreement, the Depositary thereafter shall discontinue the transfer of Receipts, shall suspend the distribution of dividends to the Holders of the Receipts thereof and shall not give any further notices (other than notice of such termination) or perform any further acts under this Deposit Agreement, except that the Depositary shall continue to collect dividends and other distributions pertaining to the Series A Preferred Stock.

Subject to the first paragraph of this Section 6.2, this Deposit Agreement may be terminated by the Corporation or the Depositary only if (i) all outstanding Depositary Shares issued hereunder have been redeemed pursuant to Section 2.8, (ii) there shall have been made a final distribution in respect of the Series A Preferred Stock in connection with any liquidation, dissolution or winding up of the Corporation and such distribution shall have been distributed to the Holders of Receipts representing Depositary Shares pursuant to Section 4.1 or Section 4.2, as applicable, or (iii) upon the consent of Holders of Receipts representing in the aggregate not less than a majority of the Depositary Shares outstanding.

The rights of the Depositary, any Depositary's Agent, Transfer Agent or Registrar and the obligations of the Corporation under Sections 5.3, 5.7 and 5.8 hereof shall survive termination of this Deposit Agreement or the resignation, removal or succession of the Depositary.

**ARTICLE VII  
MISCELLANEOUS**

Section 7.1. Counterparts.

This Deposit Agreement may be executed in any number of counterparts, and by each of the parties hereto on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed an original, but all such counterparts taken together shall constitute one and the same instrument. A signature to this Deposit Agreement transmitted electronically shall have the same authority, effect, and enforceability as an original signature.

Section 7.2. Exclusive Benefit of Parties.

This Deposit Agreement is for the exclusive benefit of the parties hereto, and their respective successors hereunder, and shall not be deemed to give any legal or equitable right, remedy or claim to any other Person whatsoever.

Section 7.3. Invalidity of Provisions.

In case any one or more of the provisions contained in this Deposit Agreement or in the Receipts should be or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein or therein shall in no way be affected, prejudiced or disturbed thereby; provided, however, that if any such provision adversely affects the rights, duties, liabilities or obligations of the Depository, the Depository shall be entitled to resign immediately.

Section 7.4. Notices.

Any and all notices, requests, orders, approvals, instructions or directions to be given to the Corporation hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail or a nationally recognized overnight delivery service, or by facsimile transmission or electronic mail, confirmed either by (a) telephone with the recipient of such facsimile transmission or electronic mail or (b) letter, addressed to the Corporation at:

Midland States Bancorp, Inc.  
1201 Network Centre Drive  
Effingham, Illinois 62401  
Attention: Douglas J. Tucker, Senior Vice President and Corporate Counsel  
Email: dtucker@midlandsb.com

or at any other addresses of which the Corporation shall have notified the Depository in writing.

Any and all notices, requests, orders, approvals, instructions or directions to be given to the Depository hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail or a nationally recognized overnight delivery service, or by facsimile transmission or electronic mail, confirmed either by (a) telephone with the recipient of such facsimile transmission or electronic mail or (b) letter, addressed to the Depository at:

Computershare Trust Company, N.A.  
150 Royall Street  
Canton, MA 02021  
Attention: Client Services

or at any other addresses of which the Depository shall have notified the Corporation in writing.

Any and all notices to be given to any Record Holder of a Receipt hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if transmitted through the facilities of DTC in accordance with DTC's procedures or personally delivered, sent by a nationally recognized overnight delivery service or sent by mail or facsimile transmission, confirmed by letter, addressed to such Record Holder at the address of such Record Holder as it appears on the books of the Depository, or if such Holder shall have timely filed with the Depository a written request that notices intended for such Holder be mailed to some other address, at the address designated in such request.

Delivery of a notice sent by mail or by facsimile transmission shall be deemed to be effected at the time when a duly addressed letter containing the same (or a confirmation thereof in the case of a facsimile transmission) is deposited, postage prepaid, in a post office letter box. The Depository or the Corporation may, however, act upon any facsimile transmission received by it from the other or from any Holder of a Receipt, notwithstanding that such facsimile transmission shall not subsequently be confirmed by letter or as aforesaid.

Section 7.5. Depository's Agents.

The Depository may from time to time appoint Depository's Agents to act in any respect for the Depository for the purposes of this Deposit Agreement and may at any time appoint additional Depository's Agents and vary or terminate the appointment of such Depository's Agents. The Depository will promptly notify the Corporation of any such action.

Section 7.6. Appointment of Registrar, Dividend Disbursing Agent and Redemption Agent in Respect of the Series A Preferred Stock.

The Corporation hereby appoints the Computershare and the Trust Company, collectively, as Registrar, Transfer Agent, dividend disbursing agent and redemption agent with respect to the shares of the Series A Preferred Stock deposited with the Depository hereunder, and each Computershare and the Trust Company hereby accept such respective appointments, subject to the express terms and conditions of this Deposit Agreement (and no implied terms or conditions) and, as such, will reflect changes in the number of shares of deposited Series A Preferred Stock held by it by notation, book-entry or other appropriate method. With respect to the appointment of the Computershare and the Trust Company, collectively, as Registrar, Transfer Agent, dividend disbursing agent and redemption agent in respect of the shares of the Series A Preferred Stock, each of Computershare and the Trust Company, in its respective capacities under such appointments, shall be entitled to the same rights, indemnities, immunities and benefits as the Depository hereunder as if explicitly named in each such provision.

Section 7.7. Holder of Receipts Are Parties.

The Holders of Receipts from time to time shall be parties to this Deposit Agreement and shall be bound by all of the terms and conditions hereof and of the Receipts by acceptance of delivery thereof.

Section 7.8. Governing Law.

This Deposit Agreement and the Receipts and all rights hereunder and thereunder and provisions hereof and thereof shall be interpreted and construed in accordance with the laws of the State of New York. Any and all claims, controversies, and causes of action arising out of or relating to this Deposit Agreement and the Receipts, whether sounding in contract, tort, or statute, shall be governed by the laws of the State of New York, including its statutes of limitations, without giving effect to any conflict-of-laws rule that would result in the application of the laws of a different jurisdiction. The parties hereby irrevocably submit to the jurisdiction of any state or federal court sitting in New York County, New York over any suit, action or proceeding arising out of or relating to this Deposit Agreement or the Receipts.

Section 7.9. Inspection of Deposit Agreement.

Copies of this Deposit Agreement shall be filed with the Depository and the Depository's Agents and shall be made available for inspection during business hours upon reasonable notice to the Depository by any Holder of a Receipt.

Section 7.10. Headings.

The headings of articles and sections in this Deposit Agreement and in the form of the Receipt set forth in Exhibit A hereto have been inserted for convenience only and are not to be regarded as a part of this Deposit Agreement or the Receipts or to have any bearing upon the meaning or interpretation of any provision contained herein or in the Receipts.

Section 7.11. Force Majeure.

Notwithstanding anything to the contrary contained herein, the Depository, any Depository's Agent, Transfer Agent or Registrar will not be liable for any delays or failures in performance resulting from acts beyond its reasonable control including, without limitation, acts of God, terrorist acts, shortage of supply, breakdowns or malfunctions, interruptions or malfunction of computer facilities, or loss of data due to power failures or mechanical difficulties with information storage or retrieval systems, labor difficulties, pandemic, epidemic, war, or civil unrest.

Section 7.12. Further Assurances

Each of the Corporation and the Depository, respectively, agrees that it will perform, acknowledge, and deliver or cause to be performed, acknowledged or delivered, all such further and other acts, documents, instruments and assurances as the Depository or the Corporation, respectively, may reasonably require in connection with the performance of this Deposit Agreement.

Section 7.13. Confidentiality.

The Depository and the Corporation agree that all books, records, information and data pertaining to the business of the other party, including *inter alia*, personal, non-public Holder information and the fees for services, which are exchanged or received pursuant to the negotiation or the carrying out of this Deposit Agreement, shall remain confidential, and shall not be voluntarily disclosed to any other Person, except as may be required by law or legal process. To avoid doubt, the parties hereto shall not be required to keep the terms of this Deposit Agreement confidential. To the extent Depository processes personal information that would constitute EU Personal Data as defined under Regulation (EU) 2016/679 (General Data Protection Regulation), Depository will comply with applicable law.

*[Remainder of page intentionally left blank; signature page follows.]*

IN WITNESS WHEREOF, the Corporation and the Depositary have duly executed this Deposit Agreement as of the day and year first above set forth, and all Holders of Receipts shall become parties hereto by and upon acceptance by them of delivery of Receipts issued in accordance with the terms hereof.

MIDLAND STATES BANCORP, INC.

By: /s/ Jeffrey G. Ludwig

Name: Jeffrey G. Ludwig

Title: President and Chief Executive Officer

COMPUTERSHARE INC.

By: /s/ Rachel Fisher

Name: Rachel Fisher

Title: Sr. Contract Negotiation Specialist

COMPUTERSHARE TRUST COMPANY, N.A.

By: /s/ Rachel Fisher

Name: Rachel Fisher

Title: Sr. Contract Negotiation Specialist

*[Signature Page to Deposit Agreement]*

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EXHIBIT A

[FORM OF FACE OF RECEIPT]

[IF GLOBAL RECEIPT IS ISSUED: UNLESS THIS GLOBAL RECEIPT IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO THE DEPOSITARY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY RECEIPT ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL RECEIPT SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR’S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL RECEIPT SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE DEPOSIT AGREEMENT REFERRED TO BELOW.]

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DEPOSITARY SHARES,  
EACH REPRESENTING 1/40<sup>th</sup> OF ONE SHARE  
OF  
7.750% FIXED RATE RESET NON-CUMULATIVE PERPETUAL PREFERRED STOCK,  
SERIES A  
OF  
MIDLAND STATES BANCORP, INC.  
SEE REVERSE FOR CERTAIN DEFINITIONS

Dividend Payment Dates: When, as, and if declared by the board of directors or a duly authorized committee of the board of directors of Midland States Bancorp, Inc., an Illinois corporation (the "Corporation"), and to the extent the Corporation has the funds legally available, it will pay cash dividends on Series A Preferred Stock (as defined below) quarterly, in arrears, on March 30, June 30, September 30 and December 30 of each year, beginning on December 30, 2022.

COMPUTERSHARE INC., a Delaware corporation, and COMPUTERSHARE TRUST COMPANY, N.A., a national banking association, acting jointly as Depositary (the "Depositary"), hereby certifies that Cede & Co. is the registered owner of [ ] depositary shares ("Depositary Shares"), each Depositary Share representing 1/40<sup>th</sup> of one share of 7.750% Fixed Rate Reset Non-Cumulative Perpetual Preferred Stock, Series A, liquidation preference \$1,000 per share, \$2.00 par value per share (the "Series A Preferred Stock"), of the Corporation, on deposit with the Depositary, subject to the terms and entitled to the benefits of the Deposit Agreement, dated as of August 24, 2022 (the "Deposit Agreement"), among the Corporation, the Depositary and the Holders from time to time of the Receipts. By accepting this Depositary Receipt, the Holder hereof becomes a party to and agrees to be bound by all the terms and conditions of the Deposit Agreement. This Receipt shall not be valid or obligatory for any purpose or entitled to any benefits under the Deposit Agreement unless it shall have been executed by the Depositary by the manual or facsimile signature of a duly authorized officer and, if a Registrar for the Receipts (other than the Depositary) shall have been appointed, countersigned by such Registrar by the manual or facsimile signature of a duly authorized officer thereof.

Dated:  
Computershare Inc. and Computershare Trust Company, N.A., as  
Depositary

Dated:  
Computershare Trust Company, N.A., as  
Transfer Agent and Registrar

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

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

\_\_\_\_\_  
Authorized Officer

\_\_\_\_\_  
Authorized Officer

\_\_\_\_\_

[FORM OF REVERSE OF RECEIPT]

THE CORPORATION WILL FURNISH WITHOUT CHARGE TO EACH REGISTERED HOLDER OF RECEIPTS WHO SO REQUESTS, A COPY OF THE DEPOSIT AGREEMENT AND A COPY OF THE STATEMENT OF RESOLUTION OF 7.750% FIXED RATE RESET NON-CUMULATIVE PERPETUAL PREFERRED STOCK, SERIES A OF MIDLAND STATES BANCORP, INC. ANY SUCH REQUEST IS TO BE ADDRESSED TO THE DEPOSITARY NAMED ON THE FACE OF THIS RECEIPT.

The Corporation will furnish without charge to each registered holder of Receipts who so requests, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof of the Corporation, and the qualifications, limitations or restrictions of such preferences and/or rights. Such request may be made to the Corporation or to the Registrar.

EXPLANATION OF ABBREVIATIONS

The following abbreviations when used in the form of ownership on the face of this certificate shall be construed as though they were written out in full according to applicable laws or regulations. Abbreviations in addition to those appearing below may be used.

Abbreviation	Equivalent Word	Abbreviation	Equivalent Word
JT TEN	As joint tenants, with right of survivorship and not as tenants in common	TEN BY ENT	As tenants by the entireties
TEN IN COM	As tenants in common	UNIF GIFT MIN ACT	Uniform Gifts to Minors Act

Abbreviation	Equivalent Word	Abbreviation	Equivalent Word	Abbreviation	Equivalent Word
ADM	Administrator(s), Administratrix	EX	Executor(s), Executrix	PL	Public Law
AGMT	Agreement	FBO	For the benefit of	TR	(As) trustee(s), for, of
ART	Article	FDN	Foundation	U	Under
CH	Chapter	GDN	Guardian(s)	UA	Under Agreement
CUST	Custodian for	GDNSHP	Guardianship	UW	Under will of, Of will of, Under last will & testament
DEC	Declaration	MIN	Minor(s)		
EST	Estate, of Estate of	PAR	Paragraph		

ASSIGNMENT

For value received, \_\_\_\_\_ hereby sell(s), assign(s) and transfer(s) unto \_\_\_\_\_ whose taxpayer identification number is \_\_\_\_\_ and whose address including postal zip code is \_\_\_\_\_, the Depository Shares represented by the within Receipt, and do(es) hereby irrevocably constitute and appoint \_\_\_\_\_ Attorney, to transfer the said Depository Shares on the books of the within named Depository with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

NOTICE: The signature to the assignment must correspond with the name as written upon the face of this Receipt in every particular, without alteration or enlargement or any change whatsoever.

SIGNATURE GUARANTEED

NOTICE: The signature(s) should be guaranteed by a participant in a Medallion Signature Guarantee Program at a guarantee level acceptable to the Corporation's transfer agent. Guarantees by a notary public are not acceptable.

# BARACK FERRAZZANO

Barack Ferrazzano Kirschbaum & Nagelberg LLP

August 24, 2022

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

Ladies and Gentlemen:

We refer to the Registration Statement on Form S-3, File No. 333-264370 (the "Registration Statement"), filed by Midland States Bancorp, Inc., an Illinois corporation (the "Company"), with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "Securities Act"), which Registration Statement was declared effective on April 26, 2022. Pursuant to the Registration Statement, the Company is issuing 115,000 shares (the "Underlying Preferred Shares") of its 7.750% Fixed-Rate Reset Non-Cumulative Perpetual Preferred Stock, Series A, par value \$2.00 per share (the "Series A Preferred Stock"), and 4,600,000 depositary shares (the "Depositary Shares"), each representing a 1/40th interest in a share of the Series A Preferred Stock. The Depositary Shares will be evidenced by depositary receipts (the "Depositary Receipts") issued pursuant to a Deposit Agreement, dated as of August 24, 2022 (the "Deposit Agreement"), among the Company, Computershare Inc. and Computershare Trust Company, N.A., jointly as depositary, Computershare Trust Company, N.A., as transfer agent, and the holders from time to time of the Depositary Receipts. The Depositary Shares are to be sold by the Company pursuant to an Underwriting Agreement, dated as of August 17, 2022 (the "Underwriting Agreement"), between the Company and Keefe, Bruyette & Woods, Inc., Raymond James & Associates, Inc. and Piper Sandler & Co. as representatives of the underwriters named therein.

This opinion letter is being furnished in connection with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement or related prospectus, other than as expressly stated herein.

We have examined (i) the Registration Statement, (ii) the Underwriting Agreement, (iii) the Deposit Agreement and the form of Depositary Receipt attached thereto, (iv) the Company's articles of incorporation, as amended, and by-laws, each as currently in effect, (v) the Statement of Resolution of the Company relating to the Series A Preferred Stock, as filed with the Secretary of State of the State of Illinois on August 22, 2022, and (vi) the resolutions adopted by the board of directors of the Company and the pricing committee thereof relating to the Registration Statement, the Underwriting Agreement, the Deposit Agreement and the issuance of the Underlying Preferred Shares and the Depositary Shares. We have also examined originals, or copies of originals certified to our satisfaction, of such agreements, documents, certificates and statements of the Company and other corporate documents and instruments, and have examined such questions of law, as we have considered relevant and necessary as a basis for this opinion letter. We have assumed the authenticity of all documents submitted to us as originals, the genuineness of all signatures, the legal capacity of all persons and the conformity with the original documents of any copies thereof submitted to us for examination. As to facts relevant to the opinions expressed herein, we have relied without independent investigation or verification upon, and assumed the accuracy and completeness of, certificates, letters and oral and written statements and representations of public officials and officers and other representatives of the Company.

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Based on and subject to the foregoing and the other limitations, qualifications and assumptions set forth herein, we are of the opinion that:

1. The issuance of 115,000 Underlying Preferred Shares covered by the Registration Statement has been duly authorized by all necessary corporate action of the Company and, when duly issued and delivered by the Company pursuant to the Underwriting Agreement and the Deposit Agreement against payment of the purchase price for the Depositary Shares set forth in the Underwriting Agreement, such Underlying Preferred Shares will be validly issued, fully paid and nonassessable.

2. The Depositary Receipts evidencing 4,600,000 of the Depositary Shares covered by the Registration Statement to be issued pursuant to the Underwriting Agreement and the Deposit Agreement will be validly issued and entitle the holders thereof to the rights specified therein and in the Deposit Agreement when Depositary Receipts representing such Depositary Shares shall have been duly executed, issued and delivered against the deposit by the Company of 115,000 duly authorized and validly issued, fully paid and nonassessable Underlying Preferred Shares as contemplated by the Underwriting Agreement and the Deposit Agreement.

Our opinions are subject to bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, fraudulent transfer and other similar laws relating to or affecting creditors' rights generally, including, to the extent applicable, the rights or remedies of creditors of a "covered financial company" (as defined in Section 201 of the Dodd-Frank Wall Street Reform and Consumer Protection Act), and to general equitable principles (regardless of whether considered in a proceeding in equity or at law), including concepts of commercial reasonableness, good faith and fair dealing and the possible unavailability of specific performance or injunctive relief. Our opinions are also subject to (i) provisions of law which may require that a judgment for money damages rendered by a court in the United States of America be expressed only in United States dollars, (ii) requirements that a claim with respect to any obligations that are denominated or payable other than in United States dollars (or a judgment denominated or payable other than in United States dollars in respect of such claim) be converted into United States dollars at a rate of exchange prevailing on a date determined pursuant to applicable law and (iii) governmental authority to limit, delay or prohibit the making of payments outside of the United States of America or in a foreign currency.

This opinion letter is limited to the Illinois Business Corporation Act, as amended, and the laws of the State of New York (excluding the securities 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 hereby consent to the filing of this opinion letter as an exhibit to the Registration Statement and to all references to our firm included in or made a part of the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act.

Very truly yours,

/s/ Barack Ferrazzano Kirschbaum & Nagelberg LLP

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