

Registration Nos. 333-70984, 333-70984-4, 333-70984-3, 333-70984-2 and
333-70984-1

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

AMENDMENT NO. 1

TO

FORM S-3
REGISTRATION STATEMENT
Under
The Securities Act of 1933

<TABLE>			
<S>	<C>		<C>
BANK OF AMERICA CORPORATION	DELAWARE		56-0906609
BAC CAPITAL TRUST I	DELAWARE		56-6589379
BAC CAPITAL TRUST II	DELAWARE		56-6589381
BAC CAPITAL TRUST III	DELAWARE		56-6589382
BAC CAPITAL TRUST IV	DELAWARE		56-6589383
(Exact Name of Registrant as Specified in Charter)	(State or Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification Number)	
</TABLE>			

Bank of America Corporation, Bank of America Corporate Center, Charlotte, North Carolina 28255
(888) 279-3457
(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

PAUL J. POLKING
Executive Vice President and General Counsel
Bank of America Corporation
Bank of America Corporate Center
Charlotte, North Carolina 28255
(704) 386-5000

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

Copies to:

<TABLE>			
<C>		<S>	
BOYD C. CAMPBELL, JR.		JAMES R. TANENBAUM	
Smith Helms Mulliss & Moore, L.L.P.	Stroock & Stroock & Lavan LLP		
201 North Tryon Street		180 Maiden Lane	
Charlotte, North Carolina 28202		New York, New York 10038	
</TABLE>			

Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this Registration Statement.

The Registrants hereby amend this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrants shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act, or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may

determine.

SUBJECT TO COMPLETION

PRELIMINARY PROSPECTUS DATED NOVEMBER 15, 2001

PROSPECTUS

[LOGO] BANK OF AMERICA

Junior Subordinated Notes

BAC Capital Trust I Capital Securities
BAC Capital Trust II guaranteed as set forth herein by
BAC Capital Trust III Bank of America Corporation
BAC Capital Trust IV

This prospectus describes the Bank of America Corporation junior subordinated notes and the BAC Capital Trust I, BAC Capital Trust II, BAC Capital Trust III and BAC Capital Trust IV capital securities.

From time to time, each Trust may:

- . sell capital securities representing undivided preferred beneficial interests in the Trust to the public;
- . sell common securities representing undivided common beneficial interests in the Trust to Bank of America Corporation;
- . use the proceeds from these sales to buy an equal principal amount of junior subordinated notes of Bank of America Corporation; and
- . regularly distribute the cash payments it receives on the junior subordinated notes it owns to the holders of its capital and common securities.

Bank of America Corporation will issue its junior subordinated notes to the Trusts. These notes may be distributed to holders of capital or common securities upon dissolution of a Trust. Bank of America Corporation also will guarantee the payment by each Trust of the capital securities to the extent described in this prospectus.

The specific terms of the notes and the capital securities, including the interest and distribution rates and the liquidation amount, will be provided in an accompanying prospectus supplement. You should read this prospectus and the applicable prospectus supplement carefully before you invest. This prospectus may be used to offer and sell securities only if accompanied by the prospectus supplement for those securities.

Our notes are unsecured. Our notes and the capital securities are not savings accounts, deposits or other obligations of a bank, are not guaranteed by Bank of America, N.A. or any other bank, are not insured by the Federal Deposit Insurance Corporation or any other governmental agency and involve investment risks, including possible loss of principal.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these notes or the capital securities or passed on the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

The date of this Prospectus is November , 2001

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

ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that Bank of America Corporation and BAC Capital Trust I, BAC Capital Trust II, BAC Capital Trust III and BAC Capital Trust IV filed with the Securities Exchange Commission using a "shelf" registration or continuous offering process. Under this shelf process, from time to time, a Trust may sell capital securities representing undivided preferred beneficial interests in the Trust to the public and common securities representing undivided common beneficial interests in the Trust to us, in one or more offerings. In turn, the Trust will invest the proceeds from those sales in our junior subordinated notes.

This prospectus provides you with a general description of the securities that the Trusts and we may offer. Each time a Trust sells securities, we will provide you with a prospectus supplement that will contain specific information about the terms of the securities being offered by the Trust and by us in that offering. The prospectus supplement also will include a discussion of any risk factors or other special considerations applicable to those securities. The prospectus supplement also may add, update or change information contained in this prospectus. If there is any inconsistency between the information in this prospectus and the prospectus supplement, you should rely on the information in the prospectus supplement. You should read both this prospectus and the applicable prospectus supplement together with the additional information that is incorporated by reference in this prospectus. That additional information is described below under the heading "Where You Can Find More Information."

You should rely only on the information provided in this prospectus and in the prospectus supplement, including the information incorporated by reference. Neither we, nor the Trusts, nor any underwriters or agents, have authorized anyone to provide you with different information. Neither we nor the Trusts are offering the securities in any state where the offer is not permitted.

Unless otherwise indicated or unless the context requires otherwise, all references in this prospectus to "Bank of America," "we," "us" or "our," or similar references, mean Bank of America Corporation.

WHERE YOU CAN FIND MORE INFORMATION

We and the Trusts have filed a registration statement on Form S-3 with the SEC covering the securities to be offered and sold using this prospectus. You should refer to this registration statement and its exhibits for additional information about Bank of America and the Trusts. This prospectus summarizes material provisions of contracts and other documents that we refer you to. Because the prospectus may not contain all of the information that you may find important, you should review the full text of these documents, which we have included as exhibits to the registration statement.

We also file annual, quarterly and special reports, proxy statements and other information with the SEC. Our SEC filings are available to the public over the Internet at the SEC's web site at www.sec.gov. You also may read and copy any document that we file at the Public Reference Room of the SEC at 450 Fifth Street, N.W., Washington, D.C. 20549. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. You also may inspect our filings at the regional office of the SEC located at Citicorp Center, 500 West Madison Street, Suite 1400, Chicago, Illinois 60661-2511. You also can inspect reports and other information we file at the offices of the New York Stock Exchange, Inc., 20 Broad Street, New York, New York 10005.

2

The SEC allows us to incorporate by reference in this prospectus the information we file with it. This means that:

- . incorporated documents are considered part of this prospectus;
- . we can disclose important information to you by referring you to those documents; and
- . information that we file with the SEC will automatically update and supersede this incorporated information and the information contained in this prospectus.

We incorporate by reference the documents listed below that we have previously filed with the SEC:

- . our annual report on Form 10-K for the year ended December 31, 2000;

- . our quarterly reports on Form 10-Q for the quarters ended March 31, 2001, June 30, 2001 and September 30, 2001;
- . our current reports on Form 8-K dated January 16, 2001, January 17, 2001, January 24, 2001, April 16, 2001, June 5, 2001, June 22, 2001, June 27, 2001, July 16, 2001, August 15, 2001, October 10, 2001 and October 15, 2001 (in each case, with the exception of any information filed pursuant to Item 9 of Form 8-K, which is not incorporated herein by reference); and
- . the description of our common stock which is contained in our registration statement filed pursuant to Section 12 of the Securities Exchange Act of 1934, as amended, as modified by our current report on Form 8-K dated September 25, 1998.

We also incorporate by reference each of the following documents that we will file with the SEC after the date of this prospectus (except any information filed pursuant to Item 9 of Form 8-K) until this offering is completed:

- . reports filed under Sections 13(a) and (c) of the Securities Exchange Act;
- . definitive proxy or information statements filed under Section 14 of the Securities Exchange Act in connection with any subsequent stockholders' meetings; and
- . any reports filed under Section 15(d) of the Securities Exchange Act.

You should assume that the information appearing in this prospectus is accurate as of the date of this prospectus only. Our business, financial position and results of operations may have changed since that date.

You may request a copy of any filings referred to above (excluding exhibits), at no cost, by contacting us at the following address:

Bank of America Corporation
 Corporate Treasury Division
 NC1-007-23-01
 100 North Tryon Street
 Charlotte, North Carolina 28255
 (704) 386-5972

3

FORWARD-LOOKING STATEMENTS

This prospectus and all accompanying prospectus supplements contain or incorporate statements that constitute "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act. Those statements can be identified by the use of forward-looking language such as "will likely result," "may," "are expected to," "is anticipated," "estimate," "projected," "intends to" or other similar words. Our actual results, performance or achievements could differ materially from the results expressed in, or implied by, those forward-looking statements. Those statements are subject to certain risks and uncertainties, including, but not limited to, certain risks described in the prospectus supplement. When considering those forward-looking statements, you should keep in mind these risks, uncertainties and other cautionary statements made in this prospectus and any accompanying prospectus supplement. You should not place undue reliance on any forward-looking statement which speaks only as of the date made.

BANK OF AMERICA CORPORATION

Bank of America Corporation is a Delaware corporation, a bank holding company and a financial holding company. Our principal assets are our shares of stock of Bank of America, N.A. and our other banking and nonbanking subsidiaries. Through those subsidiaries, we provide a diversified range of banking and nonbanking financial services and products, primarily throughout the Mid-Atlantic (Maryland, Virginia and the District of Columbia), the Midwest (Illinois, Iowa, Kansas and Missouri), the Southeast (Florida, Georgia, North Carolina, South Carolina and Tennessee), the Southwest (Arizona, Arkansas, New Mexico, Oklahoma and Texas), the Northwest (Oregon and Washington) and the West (California, Idaho and Nevada) regions of the United States and in selected international markets.

We, and our subsidiaries, are subject to supervision by various United States federal and state banking and other regulatory authorities. The Gramm-Leach-Bliley Act amended a number of federal banking laws. In particular, the Gramm-Leach-Bliley Act permits a financial holding company, and the

companies under its control, to engage directly or indirectly in activities considered "financial in nature" (including, without limitation, banking, insurance and securities activities), either de novo or by acquisition, provided the Board of Governors of the Federal Reserve System (referred to as the "Federal Reserve Board") is given after-the-fact notice of the new activities. The Gramm-Leach-Bliley Act also permits national banks to engage in activities considered financial in nature through a financial subsidiary, subject to certain conditions and limitations and with the prior approval of the Office of the Comptroller of the Currency (referred to as the "Comptroller"). For additional information about various regulatory aspects of our business, see "--Regulatory Matters" below.

Business Segment Operations

We provide a diversified range of banking and nonbanking financial services and products through our various subsidiaries. We report the results of our operations through four business segments: (1) Consumer and Commercial Banking, (2) Asset Management, (3) Global Corporate and Investment Banking and (4) Equity Investments. In the first quarter of 2001, our thirty-year mortgage portfolio was moved from Consumer and Commercial Banking to the Corporate Other segment. In the third quarter of 2001, certain consumer finance businesses being liquidated were transferred from Consumer and Commercial Banking to Corporate Other.

Consumer and Commercial Banking

Consumer and Commercial Banking provides a wide array of products and services to individuals, small businesses and middle market companies through multiple delivery channels.

4

The major components of Consumer and Commercial Banking are Banking Regions, Consumer Products and Commercial Banking.

. Banking Regions

Banking Regions serves consumer households in 21 states and the District of Columbia and overseas through our extensive network of approximately 4,300 banking centers, 13,000 ATMs, telephone and Internet channels on www.bankofamerica.com. Banking Regions provides a wide array of products and services, including deposit products such as checking, money market savings accounts, time deposits and IRAs, debit card products and credit products such as home equity, mortgage and personal auto loans. Banking Regions also includes small business banking providing treasury management, credit services, community investment, check card, e-commerce and brokerage services to over two million small business relationships across the franchise.

. Consumer Products

Consumer Products provides specialized services such as the origination and servicing of residential mortgage loans, issuance and servicing of credit cards, direct banking via the telephone and the Internet, lending and investing to develop low- and moderate-income communities, student lending and certain insurance services. Consumer Products also provides retail finance and floorplan programs to marine, RV and auto dealerships.

. Commercial Banking

Commercial Banking provides commercial lending and treasury management services to middle market companies with annual revenue between \$10 million and \$500 million. These services are available through relationship manager teams as well as through alternative channels such as the telephone via the commercial service center and the Internet by accessing Bank of America Direct.

Asset Management

Asset Management includes the Private Bank, Banc of America Capital Management and Banc of America Investment Services, Inc. The Private Bank offers financial solutions to high-net-worth clients and foundations in the U.S. and internationally by providing customized asset management and credit, financial advisory, fiduciary, trust and banking services. Banc of America Capital Management offers management of equity, fixed income, cash and alternative investments; manages the assets of individuals, corporations, municipalities, foundations and universities, and public and private institutions; and provides advisory services to our affiliated family of mutual

funds. Banc of America Investment Services, Inc. provides both full-service and discount brokerage services through investment professionals located throughout our franchise and a brokerage web site that provides customers a wide array of market analyses, investment research and self-help tools, account information and transaction capabilities.

Global Corporate and Investment Banking

Global Corporate and Investment Banking provides a broad array of financial services such as investment banking, trade finance, treasury management, lending, capital markets, leasing and financial advisory services to domestic and international corporations, financial institutions and government entities. Clients are supported through offices in 38 countries in four distinct geographic regions: U.S. and Canada; Asia; Europe, Middle East and Africa; and Latin America. Products and services provided include loan origination, merger and acquisition advisory, debt and equity underwriting and trading, cash management, derivatives, foreign exchange, leasing, leveraged finance, project finance, senior bank debt, structured finance and trade services.

5

Global Corporate and Investment Banking offers clients a comprehensive range of global capabilities through three components: Global Investment Banking, Global Credit Products and Global Treasury Services.

. Global Investment Banking

Global Investment Banking includes our investment banking activities and risk management products. Through a separate subsidiary, Banc of America Securities LLC, Global Investment Banking underwrites and makes markets in equity securities, high-grade and high-yield corporate debt securities, commercial paper and mortgage-backed and asset-backed securities. Banc of America Securities LLC also provides correspondent clearing services for other securities broker/dealers, traditional brokerage services to high-net-worth individuals and prime-brokerage services. Debt and equity securities research, loan syndications, merger and acquisition advisory services, private placements and equity derivatives also are provided through Banc of America Securities LLC.

In addition, Global Investment Banking provides risk management solutions for our global customer base using interest rate, credit and commodity derivatives, foreign exchange, fixed income and mortgage-related products. In support of these activities, the businesses will take positions in these products and capitalize on market-making activities. The Global Investment Banking business also takes an active role in the trading of fixed income securities in all of the regions in which Global Corporate and Investment Banking transacts business and is a primary dealer in the U.S., as well as in several international locations.

. Global Credit Products

Global Credit Products provides credit and lending services and includes the corporate industry-focused portfolio, leasing and project finance.

. Global Treasury Services

Global Treasury Services provides the technology, strategies and integrated solutions to help financial institutions, government agencies and public and private companies of all sizes manage their operations and cash flows on a local, regional, national and global level.

Equity Investments

Equity Investments includes Principal Investing, which is comprised of a diversified portfolio of investments in companies at all stages of the business cycle, from start-up to buyout. Investments are made on both a direct and indirect basis in the U.S. and overseas. Direct investing activity focuses on playing an active role in the strategic and financial direction of the portfolio company as well as providing broad business experience and access to our global resources. Indirect investments represent passive limited partnership stakes in funds managed by experienced third party private equity investors who act as general partners. Equity Investments also includes our strategic technology and alliances investment portfolio.

Corporate Other

Corporate Other consists primarily of the functions associated with managing

our interest rate risk and Consumer Special Assets, which includes certain consumer finance businesses we are liquidating and certain residential mortgages originated by the mortgage group (not from retail branch originations). Corporate Other also includes the earnings associated with unassigned capital, certain expenses that have not been allocated to any particular business segment and other corporate transactions.

6

Acquisitions and Sales

As part of our operations, we regularly evaluate the potential acquisition of, and hold discussions with, various financial institutions and other businesses that are eligible for financial holding company ownership or control. In addition, we regularly analyze the values of, and submit bids for, the acquisition of customer-based funds and other liabilities and assets of suitable financial institutions and other businesses. We also regularly consider the potential disposition of certain of our assets, branches, subsidiaries or lines of businesses. As a general rule, we publicly announce any material acquisitions or dispositions when a definitive agreement has been reached.

Regulatory Matters

The following discussion describes elements of an extensive regulatory framework applicable to bank holding companies, financial holding companies and banks and specific information about us and our subsidiaries. Federal regulation of banks, bank holding companies and financial holding companies is intended primarily for the protection of depositors and the Bank Insurance Fund rather than for the protection of securityholders and creditors.

As a registered bank holding company and a financial holding company, we are subject to the supervision of, and to regular inspection by, the Federal Reserve Board. Our banking subsidiaries are organized predominantly as national banking associations, which are subject to regulation, supervision and examination by the Comptroller, the Federal Deposit Insurance Corporation (referred to as the "FDIC"), the Federal Reserve Board and other federal and state regulatory agencies. In addition to banking laws, regulations and regulatory agencies, we and our subsidiaries and affiliates are subject to various other laws and regulations and supervision and examination by other regulatory agencies, all of which directly or indirectly affect our operations and management and our ability to make distributions to stockholders.

A financial holding company, and the companies under its control, are permitted to engage in activities considered "financial in nature" as defined by the Gramm-Leach-Bliley Act and Federal Reserve Board interpretations (including, without limitation, insurance and securities activities), and, therefore, may engage in a broader range of activities than permitted for bank holding companies and their subsidiaries. A financial holding company may directly or indirectly engage in activities considered financial in nature, either de novo or by acquisition, provided the financial holding company gives the Federal Reserve Board after-the-fact notice of the new activities. The Gramm-Leach-Bliley Act also permits national banks, such as our bank subsidiaries, to engage in activities considered financial in nature through a financial subsidiary, subject to certain conditions and limitations and with the prior approval of the Comptroller.

Interstate Banking

Bank holding companies (including bank holding companies that also are financial holding companies) are required to obtain the prior approval of the Federal Reserve Board before acquiring more than 5% of any class of voting stock of any bank which is not already majority-owned by the bank holding company. Pursuant to the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, a bank holding company may acquire banks in states other than its home state without regard to the permissibility of such acquisitions under state law, but subject to any state requirement that the bank has been organized and operating for a minimum period of time, not to exceed five years, and the requirement that the bank holding company, after the proposed acquisition, controls no more than 10% of the total amount of deposits of insured depository institutions in the United States and no more than 30% or such lesser or greater amount set by state law of such deposits in that state.

Subject to certain restrictions, the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 also authorizes banks to merge across state lines to create interstate branches. This

7

act also permits a bank to open new branches in a state in which it does not already have banking operations if such state enacts a law permitting de novo branching. We have consolidated our retail subsidiary banks into a single

interstate bank, Bank of America, N.A., headquartered in Charlotte, North Carolina, with full service branch offices in 21 states and the District of Columbia. In addition, we operate a limited purpose nationally chartered credit card bank, Bank of America, N.A. (USA), headquartered in Phoenix, Arizona, and three nationally chartered banker's banks: Bank of America Oregon, N.A., headquartered in Portland, Oregon, Bank of America California, N.A., headquartered in Walnut Creek, California, and Bank of America Georgia, N.A., headquartered in Atlanta, Georgia.

Changes in Regulations

Proposals to change the laws and regulations governing the banking industry are frequently introduced in Congress, in state legislatures and before the various bank regulatory agencies. The likelihood and timing of any proposals or legislation and the impact they might have on us and our subsidiaries cannot be determined at this time.

Capital and Operational Requirements

The Federal Reserve Board, the Comptroller and the FDIC have issued substantially similar risk-based and leverage capital guidelines applicable to United States banking organizations. In addition, these regulatory agencies may from time to time require that a banking organization maintain capital above the minimum levels, whether because of its financial condition or actual or anticipated growth. The Federal Reserve Board risk-based guidelines define a three-tier capital framework. Tier 1 capital consists of common and qualifying preferred shareholders' equity, less certain intangibles and other adjustments. Tier 2 capital consists of preferred stock not qualifying as Tier 1 capital, subordinated and other qualifying debt, and the allowance for credit losses up to 1.25% of risk-weighted assets. Tier 3 capital includes subordinated debt that is unsecured, fully paid, has an original maturity of at least two years, is not redeemable before maturity without prior approval by the Federal Reserve Board and includes a lock-in clause precluding payment of either interest or principal if the payment would cause the issuing bank's risk-based capital ratio to fall or remain below the required minimum. The sum of Tier 1 and Tier 2 capital less investments in unconsolidated subsidiaries represents qualifying total capital, at least 50% of which must consist of Tier 1 capital. Risk-based capital ratios are calculated by dividing Tier 1 and total capital by risk-weighted assets. Assets and off-balance sheet exposures are assigned to one of four categories of risk-weights, based primarily on relative credit risk. The minimum Tier 1 capital ratio is 4% and the minimum total capital ratio is 8%. Our Tier 1 and total risk-based capital ratios under these guidelines at September 30, 2001 were 7.95% and 12.12%, respectively. At September 30, 2001, we did not have any subordinated debt that qualified as Tier 3 capital.

The leverage ratio is determined by dividing Tier 1 capital by adjusted average total assets. Although the stated minimum ratio is 3%, most banking organizations are required to maintain ratios of least 100 to 200 basis points above 3%. Our leverage ratio at September 30, 2001 was 6.59%. We meet our leverage ratio requirement.

The Federal Deposit Insurance Corporation Improvement Act of 1991, among other things, identifies five capital categories for insured depository institutions (well capitalized, adequately capitalized, undercapitalized, significantly undercapitalized and critically undercapitalized) and requires the respective federal regulatory agencies to implement systems for "prompt corrective action" for insured depository institutions that do not meet minimum capital requirements within such categories. This act imposes progressively more restrictive constraints on operations, management and capital distributions, depending on the category in which an institution is classified. Failure to meet the capital guidelines could also subject a banking institution to capital raising requirements. An "undercapitalized" bank must develop a capital restoration plan and its

parent holding company must guarantee that bank's compliance with the plan. The liability of the parent holding company under any such guarantee is limited to the lesser of 5% of the bank's assets at the time it became "undercapitalized" or the amount needed to comply with the plan. Furthermore, in the event of the bankruptcy of the parent holding company, such guarantee would take priority over the parent's general unsecured creditors. In addition, this act requires the various regulatory agencies to prescribe certain non-capital standards for safety and soundness relating generally to operations and management, asset quality and executive compensation and permits regulatory action against a financial institution that does not meet such standards.

The various regulatory agencies have adopted substantially similar regulations that define the five capital categories identified by this act,

using the total risk-based capital, Tier 1 risk-based capital and leverage capital ratios as the relevant capital measures. Such regulations establish various degrees of corrective action to be taken when an institution is considered undercapitalized. Under the regulations, a "well capitalized" institution must have a Tier 1 risk-based capital ratio of at least 6%, a total risk-based capital ratio of at least 10% and a leverage ratio of at least 5% and not be subject to a capital directive order. Under these guidelines, each of our banking subsidiaries is considered well capitalized.

Regulators also must take into consideration (a) concentrations of credit risk; (b) interest rate risk (when the interest rate sensitivity of an institution's assets does not match the sensitivity of its liabilities or its off-balance-sheet position); and (c) risks from non-traditional activities, as well as an institution's ability to manage those risks, when determining the adequacy of an institution's capital. This evaluation will be made as a part of the institution's regular safety and soundness examination. In addition, we and any of our banking subsidiaries with significant trading activity must incorporate a measure for market risk in our regulatory capital calculations.

Distributions

Our funds for cash distributions to our stockholders are derived from a variety of sources, including cash and temporary investments. The primary source of these funds, and funds used to pay principal and interest on our indebtedness (including our obligations in connection with the junior subordinated notes and our guarantee obligations), is dividends received from our banking subsidiaries. Each of our banking subsidiaries is subject to various regulatory policies and requirements relating to the payment of dividends, including requirements to maintain capital above regulatory minimums. The appropriate federal regulatory authority is authorized to determine under certain circumstances relating to the financial condition of a bank or bank holding company that the payment of dividends would be an unsafe or unsound practice and to prohibit payment thereof.

In addition, our ability, and the ability of our banking subsidiaries, to pay dividends may be affected by the various minimum capital requirements and the capital and non-capital standards established under the Federal Deposit Insurance Corporation Improvement Act of 1991, as described above. Our right, and the right of our stockholders and creditors, to participate in any distribution of the assets or earnings of our subsidiaries is further subject to the prior claims of creditors of the respective subsidiaries.

Source of Strength

According to Federal Reserve Board policy, bank holding companies are expected to act as a source of financial strength to each subsidiary bank and to commit resources to support each such subsidiary. This support may be required at times when a bank holding company may not be able to provide such support. Similarly, under the cross-guarantee provisions of the Federal Deposit Insurance Act, in the event of a loss suffered or anticipated by the FDIC--either as a result of

9

default of a banking subsidiary or related to FDIC assistance provided to a subsidiary in danger of default--the other banking subsidiaries may be assessed for the FDIC's loss, subject to certain exceptions.

THE TRUSTS

Each Trust is a statutory business trust formed under Delaware law pursuant to a declaration of trust, executed by us as sponsor of the Trust and the trustees of the Trust, and the filing of a certificate of trust with the Secretary of State of the State of Delaware. The declaration of trust of a Trust will be amended and restated in its entirety before the Trust issues any trust securities. The form of amended and restated declaration of trust is filed as an exhibit to the registration statement of which this prospectus is a part. When we refer to the "declaration of trust" for a particular Trust in this prospectus and any prospectus supplement, we are referring to the amended and restated declaration of trust. The declaration of trust for each Trust will be qualified as an indenture under the Trust Indenture Act of 1939, as amended.

Each Trust exists exclusively to:

- . issue capital securities and common securities (referred to together as the "trust securities") representing undivided beneficial interests in the assets of that Trust;
- . invest the proceeds from the sale of its trust securities in junior subordinated notes of Bank of America; and
- . engage only in those other activities necessary or incidental thereto.

A Trust may not undertake any activity that would cause it to be classified as other than a grantor trust for United States federal income tax purposes.

We will own, directly or indirectly, all of the common securities of each Trust. These common securities will have an aggregate liquidation amount equal to at least 3% of the total capital of that Trust. The common securities generally will rank equally with the capital securities of the Trust, and the Trust will make payment on its trust securities pro rata. However, upon the occurrence of an event of default under the Trust's declaration of trust, the rights of the holders of the common securities to payment in respect of distributions and payments upon liquidation, redemption and otherwise will be subordinated to the rights of the holders of the capital securities, as more particularly described under "Description of Capital Securities--Subordination of Common Securities."

The trustees of a Trust conduct the Trust's business and affairs. Under each Trust's declaration of trust, initially there are four trustees for that Trust:

- . two regular trustees, who are employees or officers of or who are individuals affiliated with us;
- . a property trustee, who is a financial institution that is unaffiliated with us and is the indenture trustee for purposes of complying with the Trust Indenture Act; and
- . the Delaware trustee, who is an entity that maintains its principal place of business in the State of Delaware.

The property trustee holds title to the junior subordinated notes purchased by a Trust for the benefit of the holders of the Trust's trust securities. In such capacity, the property trustee has the power to exercise all rights, power and privileges as a holder under the indenture pursuant to which the junior subordinated notes are issued. In addition, the property trustee has exclusive control of the Trust's property account, a segregated non-interest bearing bank account holding all junior subordinated note payments for the benefit of the holders of the Trust's trust securities. The property trustee will make payments of distributions and payments on liquidation, redemption and otherwise to the holders of its trust securities out of funds in the Trust's property account.

Initially, The Bank of New York, a New York banking corporation, will act as property trustee of each Trust, and its affiliate, The Bank of New York (Delaware), will act as the Delaware trustee

10

of each Trust. As the holder, directly or indirectly, of all the common securities of each Trust, we have the right to appoint, remove or replace the trustees of a Trust and to increase or decrease the number of trustees, provided that at least one trustee is a Delaware trustee, at least one trustee is a property trustee, and at least one trustee is a regular trustee.

For purposes of compliance with the Trust Indenture Act, The Bank of New York also acts as trustee under the guarantee described in this prospectus and as trustee under the junior subordinated indenture, as we describe under the headings "Description of the Junior Subordinated Notes" and "Description of Guarantee." The guarantee trustee holds the guarantee for the benefit of the holders of a Trust's capital securities.

The rights of the holders of the capital and common securities of a Trust, including economic rights, rights to information and voting rights, are as set forth in the Trust's declaration of trust and the Delaware Business Trust Act. We describe these rights under the heading "Description of the Capital Securities."

Each Trust has a term of approximately 55 years, from January 1, 2001, but may terminate earlier as provided in its declaration of trust.

We will pay all costs and expenses related to the organization and operation of each Trust and the offering of the trust securities.

The principal executive office of each Trust is c/o Bank of America Corporation, Corporate Treasury Division, Bank of America Corporate Center, 100 North Tryon Street, NC1-007-23-01, Charlotte, North Carolina 28255, telephone number (704) 386-5972. The office of the Delaware trustee for each Trust in the State of Delaware is The Bank of New York (Delaware), White Clay Center, Route 273, Newark, Delaware 19711.

USE OF PROCEEDS

Each Trust will use the gross proceeds received from the sale of its securities to purchase junior subordinated notes from us. Unless we describe a different use in a prospectus supplement, we will use the net proceeds from the sale of the junior subordinated notes to a Trust for our general corporate purposes. General corporate purposes include:

- . our working capital needs;
- . investments in, or extensions of credit to, our banking and nonbanking subsidiaries;
- . the possible acquisitions of other financial institutions or their assets or liabilities;
- . the possible acquisitions of or investments in other businesses of a type we are eligible to acquire; and
- . the possible reduction of outstanding indebtedness or the repurchase or redemption of our outstanding equity securities.

Until we designate the use of these net proceeds, we will invest them temporarily. We may, from time to time, engage in additional capital financings as we deem appropriate based on our needs and prevailing market conditions. These additional capital financings may include the sale of other notes and securities.

RATIOS OF EARNINGS TO FIXED CHARGES AND RATIOS OF EARNINGS TO FIXED CHARGES AND PREFERRED STOCK DIVIDENDS

Our consolidated ratio of earnings to fixed charges and our ratio of earnings to fixed charges and preferred stock dividend requirements for each of the years in the five-year period ended December 31, 2000 and for the nine months ended September 30, 2001 are as follows:

<TABLE>
<CAPTION>

	Year Ended December 31,					Nine Months Ended September 30, 2001
	1996	1997	1998	1999	2000	
<S>	<C>	<C>	<C>	<C>	<C>	<C>
Ratio of Earnings to Fixed Charges:						
Excluding interest on deposits.....	2.3	2.2	1.8	2.2	1.8	2.0
Including interest on deposits.....	1.5	1.5	1.4	1.6	1.5	1.5
Ratio of Earnings to Fixed Charges and Preferred Stock Dividends:						
Excluding interest on deposits.....	2.2	2.2	1.8	2.2	1.8	2.0
Including interests on deposits.....	1.5	1.5	1.4	1.6	1.5	1.5

</TABLE>

The ratio of earnings to fixed charges has been computed by dividing (a) earnings before income taxes and fixed charges less (b) equity in undistributed earnings of unconsolidated subsidiaries by fixed charges.

The ratio of earnings to fixed charges and preferred stock dividends has been computed by dividing (a) earnings before income taxes and fixed charges less (b) equity in undistributed earnings of unconsolidated subsidiaries by fixed charges plus preferred stock dividend requirements.

Fixed charges consist of:

- . interest expense;
- . amortization of debt discount and appropriate issuance costs; and
- . one-third (the amount deemed to represent an appropriate interest factor) of net rent expense under lease commitments.

Preferred stock dividend requirements represent dividend requirements on the

outstanding preferred stock adjusted to reflect the pre-tax earnings that would be required to cover such dividend requirements.

DESCRIPTION OF THE CAPITAL SECURITIES

Capital securities will be issued by a Trust pursuant to its declaration of trust. The terms of the capital securities will include those stated in the declaration of trust and those made part of the declaration of trust by the Trust Indenture Act. We have summarized the general terms and provisions of the capital securities in this section. The prospectus supplement relating to the offering of a specific series of capital securities will describe the specific terms of those capital securities. The following summary is not intended to be complete and is subject to, and qualified in its entirety by reference to, the applicable declaration of trust, the Delaware Business Trust Act and the Trust Indenture Act. You should read the Trust's declaration of trust for additional information before you purchase any capital securities.

General

The declaration of trust authorizes the regular trustees of a Trust to issue capital securities and common securities on behalf of the Trust. These trust securities represent undivided beneficial interests in the assets of the Trust. The capital securities are being sold to the public in

12

this offering. The common securities are being sold to us. The common securities rank equally, and payments will be made on the common securities on a pro rata basis, with the capital securities, except as set forth under the heading "--Subordination of Common Securities." A Trust may issue only one series of capital securities and one series of common securities. The declaration of trust does not permit the Trust to issue any securities other than the trust securities or to incur any indebtedness.

Each series of capital securities will be issued in the amount, at the price and on the terms described in the prospectus supplement relating to the offering of those capital securities. These terms will mirror the terms of the corresponding junior subordinated notes to be issued by us and purchased and held by the Trust, as set forth in the applicable prospectus supplement.

The property trustee will hold title to the junior subordinated notes purchased by a Trust for the benefit of the holders of the Trust's trust securities. To the extent described under "Description of Guarantee," we will guarantee the payment of distributions on the capital securities, and payments upon redemption of the capital securities or liquidation of the Trust, out of money held by the Trust. However, the guarantee will not cover payment of distributions or amounts payable on redemption or liquidation when the Trust does not have available funds on hand to make those payments. In any event of non-payment by the Trust, holders of the capital securities have the remedies described below under the heading "'--Events of Default, Payment Failures, Waiver and Notice.'"

Distributions

Distributions on each series of capital securities:

- . will accumulate from the date of original issuance;
- . will be cumulative;
- . will be payable at the rates and on dates specified in the applicable prospectus supplement.

The distribution rate and the distribution payment dates and other payment dates for the capital securities will be the same as the interest rate and interest payment dates and other payment dates on the corresponding junior subordinated notes. When this prospectus and the applicable prospectus supplement refer to any payment of distributions, the term "distribution" includes any interest payable on unpaid distributions unless otherwise stated.

The amount of distributions payable for any period are computed on the basis of a 360-day year of twelve 30-day months. The amount of distributions payable for any period shorter than a full distribution period are computed on the basis of the actual number of days elapsed in a 360-day year of twelve 30-day months.

Payment of Distributions. Distributions on the capital securities will be made to the extent that the applicable Trust has funds available in the Trust's

property account to pay the distributions. The sole source of funds available to holders of capital securities are our payments on the corresponding junior subordinated notes. If we do not make interest payments on our junior subordinated notes, the property trustee will not have funds available to pay distributions on the related capital securities. To the extent a Trust has funds legally available for the payment of such distributions and cash sufficient to make such payments, we guarantee the payment of distributions on the basis set forth under "Description of Guarantee."

Distributions on capital securities are payable to the holders of such securities as they appear on the register of the applicable Trust on the relevant record dates. As long as the capital securities remain in book-entry only form, the record date is one business day before the distribution payment date. Unless any applicable laws and regulations and the provisions of the declaration of trust state otherwise, each such payment will be made as described under the heading "---Book-Entry Only Issuance--The Depository Trust Company."

13

If any capital securities are not in book-entry only form, the record date is set forth in the applicable prospectus supplement. If a distribution payment date is not a business day, then payment of the distribution will be made on the next succeeding business day, without any interest or any other payment in respect of any such delay. However, if the next succeeding business day is in the next calendar year, payment of the distribution will be made on the immediately preceding business day. Unless otherwise specified in the applicable prospectus supplement, a "business day" is any day other than a day on which federal or state banking institutions in New York, New York or Charlotte, North Carolina are authorized or obligated by law or executive order or regulation to remain closed.

Deferral of Distributions. We have the right, which we may exercise from time to time, under the junior subordinated indenture to defer interest payments on any series of junior subordinated notes for up to the number of consecutive interest payment periods that we will specify in the applicable prospectus supplement. We describe this right to defer interest payments on the junior subordinated notes in more detail under the heading "Description of the Junior Subordinated Notes--Option to Defer Interest Payments." As a consequence of that deferral, distributions on the related capital securities would be deferred by the applicable Trust during the same period. During an extension period, the amount of distributions due to you will continue to accumulate and, to the extent permitted by law, such deferred distributions will themselves also accrue interest compounded at the applicable distribution rate. Any deferred distributions and the interest accrued on those distributions will be paid to you on the distribution payment date that follows the end of the extension period.

Redemption of Capital Securities

A Trust will redeem its capital securities upon the maturity of the corresponding junior subordinated notes. The applicable prospectus supplement may prescribe a method for extending the maturity date of a series of junior subordinated notes which would, in turn, extend the redemption date of the corresponding trust securities.

A Trust also will redeem its capital securities upon the prepayment of the corresponding junior subordinated notes. Once we receive any required prior approval by the Federal Reserve Board, we have the right to prepay any series of junior subordinated notes:

- . on or after a date specified in the applicable prospectus supplement, in whole at any time or in part from time to time; or
- . at any time, in whole but not in part, within 90 days after the occurrence of a tax event, investment company event or capital treatment event (each as described below);

in either case, as further described under the heading "Description of the Junior Subordinated Notes--Prepayment."

Upon the payment of a series of junior subordinated notes at the stated maturity, the property trustee will apply the proceeds from the payment to redeem all outstanding related trust securities at the redemption price. The property trustee will apply the proceeds from a prepayment of junior subordinated notes, whether in whole or in part, to redeem related trust securities having an aggregate liquidation amount equal to the aggregate principal amount of junior subordinated notes we have prepaid. The redemption price of the trust securities will equal the aggregate liquidation amount of such trust securities, plus accumulated but unpaid distributions to the redemption date and the related amount of the premium, if any, paid by us upon the concurrent payment or prepayment of such corresponding junior subordinated notes. If less than all of any series of corresponding junior subordinated notes are to be prepaid on a redemption date, then the proceeds from the prepayment, including the amount of any premium, will be allocated pro rata to the redemption of the related capital securities and common securities

14

based on the relative liquidation amounts of such classes, except as set forth under the heading "--Subordination of Common Securities." If less than all of a series of capital securities are to be redeemed, then such capital securities held in book-entry only form will be redeemed as described under the heading "--Book-Entry Only Issuance--The Depository Trust Company."

Special Event Redemption. If a tax event, an investment company event or a capital treatment event occurs and continues, and we obtain any required regulatory approval, we may prepay the junior subordinated notes, in whole but not in part, in cash within 90 days following the occurrence of that event. This would cause a mandatory redemption of the related trust securities in whole, but not in part, as described above.

"Tax event" means that:

- . we have received an opinion of a nationally recognized independent tax counsel experienced in such matters which states that, as a result of any
 - (a) amendment to, or change (including any announced prospective change) in, the laws or associated regulations of the United States or any political subdivision or taxing authority of the United States; or
 - (b) official administrative pronouncement or judicial decision interpreting or applying such laws or regulations, which amendment or change is effective or such pronouncement or decision is announced on or after the date of original issuance of the capital securities;

there is more than an insubstantial risk that interest payable on the junior subordinated notes held by a Trust is not, or within 90 days of the date of such amendment, change, pronouncement or decision will not be, deductible, in whole or in part, by us for United States federal income tax purposes; or

- . the regular trustees of a Trust have been informed by a nationally recognized independent tax counsel experienced in such matters that it cannot deliver an opinion that states that the holders of the Trust's trust securities will not recognize any gain or loss for United States federal income tax purposes as a result of the dissolution of the Trust and the distribution of the corresponding junior subordinated notes.

"Investment company event" means that a Trust has received an opinion of counsel experienced in such matters which states that, as a result of the occurrence of a change in law or regulation or a change in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority, which change is in either case effective on or after the date the Trust's capital securities are issued, the Trust is or will be considered an investment company that is required to be registered under the Investment Company Act of 1940, as amended.

"Capital treatment event" means our reasonable determination that, as a result of

- . any amendment to, or change (including any announced prospective change) in, the laws or associated regulations of the United States or any political subdivision of the United States, which is effective on or after the date the related capital securities are issued, or
- . any official or administrative pronouncement or action or judicial decision interpreting or applying such laws or regulations that is

announced on or after the date the related capital securities are issued, there is more than an insubstantial risk that we will not be able to treat the capital securities as Tier 1 capital for purposes of the capital adequacy guidelines of the Federal Reserve Board.

Redemption Procedures. A Trust may redeem fewer than all of its outstanding capital securities only if all accrued and unpaid distributions have been paid on all capital securities for all distribution periods terminating on or prior to the redemption date.

15

A Trust must give notice of the redemption of capital securities to the registered holder of the capital securities at least 15 but not more than 60 days prior to the redemption date. Upon such notice, and provided we have paid the property trustee a sufficient amount of cash in connection with the prepayment or maturity of the corresponding junior subordinated notes, then, as long as the capital securities are held in book-entry only form, by 12:00 noon, New York City time, on the redemption date, the property trustee will deposit irrevocably with the depository funds sufficient to pay the applicable redemption price to the holders of such capital securities. The Trust also will give the depository irrevocable instructions and authority to pay the redemption price to the holders of the capital securities. If such capital securities are no longer in book-entry only form, the property trustee will pay the applicable redemption price by check mailed to the addresses of the holders of such capital securities as they appear in the register.

Once a Trust has given a redemption notice and the Trust deposits the required funds, then:

- . distributions with respect to the capital securities being redeemed will cease to accrue; and
- . all rights of the holders of such capital securities will cease, except the right of the holders of such capital securities to receive the redemption price on the redemption date, but without interest on such redemption price.

If any date fixed for redemption of capital securities is not a business day, then payment of the redemption price will be made on the next succeeding business day, without any interest or any other payment in respect of any such delay. However, if the next succeeding business day is in the next calendar year, payment will be made on the immediately preceding business day.

If payment of the redemption price for any capital securities is improperly withheld or refused and not paid either by the applicable Trust or by us pursuant to the guarantee as described under the heading "Description of Guarantee," distributions on such capital securities will continue to accrue at the then applicable rate from the original redemption date to the date such redemption price is actually paid. In this case, the actual payment date will be the redemption date for purposes of calculating the redemption price.

We may, at any time and from time to time, purchase outstanding capital securities by tender, in the open market or by private agreement.

Subordination of Common Securities

Payment of distributions on, the redemption price of and the liquidation distribution in respect of, capital securities and common securities ordinarily are made pro rata based on the aggregate liquidation amount of such capital securities and common securities. However, upon any event of default under the applicable declaration of trust, the rights of the holders of the common securities to receive payment of periodic distributions and payments upon liquidation and redemption and other payments are subordinated to the rights to payment of the holders of the capital securities.

In the case of any event of default under a declaration of trust, we, as the holder of the Trust's common securities, will be deemed to have waived such events of default under the declaration of trust until such events of default with respect to the Trust's capital securities have been cured, waived or otherwise eliminated. Until all events of default with respect to the capital securities have been so cured, waived or otherwise eliminated, the property trustee will act solely on behalf of the holders of such capital securities and not on our behalf, and only the holders of the capital securities will have the right to direct the property trustee to act on their behalf.

Distribution of Junior Subordinated Notes

We have the right at any time to dissolve a Trust. Upon dissolution and

after satisfaction of the liabilities of creditors of the Trust as provided by applicable law, the Trust will cause the junior subordinated notes held by the Trust to be distributed to the holders of its capital securities in an aggregate stated principal amount equal to the aggregate stated liquidation amount of the capital securities then outstanding. This may require the prior approval of the Federal Reserve Board.

16

After the date for any distribution of junior subordinated notes upon dissolution of a Trust:

- . the capital securities of the Trust will no longer be deemed to be outstanding;
- . the depository or its nominee, as the record holder of the capital securities, will receive a registered global certificate or certificates representing the corresponding junior subordinated notes to be delivered upon such distribution; and
- . any certificates representing such capital securities not held by the depository or its nominee will be deemed to represent the corresponding junior subordinated notes having an aggregate principal amount equal to the aggregate stated liquidation amount of, with an interest rate identical to the distribution rate of, such capital securities, and bearing accrued and unpaid interest in an amount equal to the accrued and unpaid distributions on such capital securities, until such certificates are surrendered for transfer or reissuance.

Liquidation Distribution Upon Dissolution

This prospectus describes any voluntary or involuntary dissolution, winding-up or termination of a Trust as a "liquidation." If a liquidation of a Trust occurs, after satisfaction of the Trust's liabilities to creditors, the holders of the capital securities are entitled to receive, out of the assets of the Trust, distributions equal to the aggregate liquidation amount of such capital securities, plus accrued and unpaid distributions to the date of payment. However, the holders of the capital securities will not receive such distribution if Bank of America instead distributes pro rata to the holders of the trust securities of a Trust the junior subordinated notes held by the Trust, as described above under the heading "'--Distribution of Junior Subordinated Notes."

If a liquidation distribution can be paid only in part because the Trust has insufficient assets available to pay the distribution in full, then the amounts payable directly by the Trust on the capital securities will be paid on a pro rata basis. The holders of the Trust's common securities will be entitled to receive distributions upon such liquidation on a ratable basis with the holders of the capital securities, except in the limited circumstances described above under the heading "'--Subordination of Common Securities."

Pursuant to its declaration of trust, a Trust shall dissolve:

- . on the expiration of its term;
- . upon the bankruptcy of Bank of America;
- . upon the filing of a certificate of dissolution or its equivalent with respect to Bank of America;
- . upon the consent of the holders of at least a majority in aggregate liquidation amount of the trust securities voting together as a single class to dissolve the Trust;
- . upon the revocation of the charter of Bank of America and the expiration of 90 days after the date of revocation without a reinstatement thereof;
- . at the election of Bank of America at any time and upon the distribution of the junior subordinated notes held by the Trust to the holders of the capital securities;
- . upon the entry of a decree of judicial dissolution of the holder of the common securities, Bank of America or the Trust; or
- . upon the redemption of all of the Trust's trust securities.

17

Events of Default, Payment Failures, Waiver and Notice

An event of default under a Trust's declaration of trust occurs when there is an event of default under the junior subordinated indenture. These events of default are described below under the heading "Description of the Junior Subordinated Notes--Events of Default, Waiver and Notice." If an event of default occurs and continues, then under the declaration of trust the rights of the holders of the common securities will be subordinate to the rights of the holders of the capital securities to the extent described under the heading "--Subordination of Common Securities."

The holders of capital securities do not have any specific rights under the declaration of trust upon the occurrence of an event of default. The property trustee under the Trust holds the related junior subordinated notes issued under the junior subordinated indenture, and if an event of default occurs and continues, the property trustee, as the sole holder of the notes, will have the right under the junior subordinated indenture to declare the principal of and interest on the notes to be immediately due and payable.

If the property trustee fails to enforce its rights upon an event of default under the junior subordinated indenture after a holder of capital securities has made a written request, such holder of capital securities may institute a legal proceeding directly against us to enforce the property trustee's rights as holder of the notes without first instituting a legal proceeding against the property trustee or any other person or entity. The rights of holders of junior subordinated notes (including the property trustee, as a holder), and in certain circumstances the holders of the capital securities, upon an event of default under the junior subordinated indenture are described further below under the heading "Description of the Junior Subordinated Notes--Events of Default, Waiver and Notice."

A default by us in payment obligations with respect to the junior subordinated notes does not constitute an event of default for purposes of the junior subordinated indenture and, therefore, does not constitute an event of default under the declaration of trust. However, if we fail to pay the principal of, or premium, if any, or interest on, a series of junior subordinated notes on the date such interest, principal or premium is otherwise payable (or in the case of redemption, the redemption date) and such failure continues (referred to as a "payment failure"), a holder of the related capital securities may bring a direct action against us. A holder may institute such a proceeding without first (1) directing the property trustee to enforce the terms of the junior subordinated notes or (2) suing us to enforce the property trustee's rights under the junior subordinated notes. In connection with such a direct action, the holders of the common securities will be subrogated to the rights of the holder of the capital securities to the extent we make any payments. This means that if a holder of capital securities already had received payment of a distribution that was the basis of the direct action, then we, as holder of the common securities, will be entitled to payment of that amount. The holders of capital securities will not be able to exercise directly any other remedy available to holders of the junior subordinated notes.

Under the declaration of trust, the holders of a majority in liquidation amount of capital securities may waive events of default with respect to the capital securities. However, if the underlying event of default under the junior subordinated indenture may not be waived, then the event of default under the declaration of trust may not be waived. Furthermore, if the waiver of the underlying event of default under the indenture requires the consent or vote of more than a majority in principal amount of the corresponding junior subordinated notes (referred to as a "super majority"), then only the same super majority of holders of the capital securities may waive the event of default under the declaration of trust.

A waiver of an event of default under the junior subordinated indenture by the property trustee, as holder of the junior subordinated notes, constitutes a waiver of the corresponding event of default under the declaration of trust. In addition, a waiver of an event of default with respect to capital securities under the declaration of trust waives the event of default with respect to the common securities for all purposes under the declaration of trust. Furthermore,

the holders of common securities are deemed to have waived events of default to the extent described under the heading "--Subordination of Common Securities."

Following the occurrence and during the continuance of an event of default, we are subject to restrictions with respect to payments related to our capital stock and our indebtedness that ranks equally with or junior to the junior subordinated notes, as more particularly described under the heading "Description of the Junior Subordinated Notes--Certain Covenants of Bank of America."

The property trustee is required to notify all holders of the capital securities of any events of default or note payment failures.

We and the regular trustees of a Trust are required to file annually with the property trustee an officers' certificate as to our respective compliance with all conditions and covenants under the applicable declaration of trust.

Voting Rights

The holders of the capital securities have no voting rights, except as described below and except as provided under the heading "Description of Guarantee--Amendment and Assignment" and as otherwise required by law and the declaration of trust.

The holders of a majority in aggregate liquidation amount of the capital securities have the right to direct the time, method and place of conducting any proceeding for any remedy available to the property trustee or exercising any trust or power of the property trustee under the declaration of trust, including the right to direct the property trustee, as holder of the junior subordinated notes, to:

- . exercise the remedies available to it under the junior subordinated indenture as the holder of the junior subordinated notes;
- . waive any past event of default that is waivable under the junior subordinated indenture;
- . exercise any right to rescind or annul a declaration that the principal of all the related series of junior subordinated notes shall be due and payable; or
- . consent to any amendment, modification or termination of the junior subordinated indenture where such consent is required.

Except for directing the time, method and place of conducting a proceeding for a remedy available to the property trustee, the property trustee will not take any action at the direction of the holders of capital securities unless the property trustee receives an opinion of tax counsel that states that the Trust will not be classified as other than a grantor trust for United States federal income tax purposes as a result of such action.

Where a consent or action under the junior subordinated indenture requires the consent or act of holders of a super majority of the junior subordinated notes, then only the same super majority of holders of the capital securities may direct the property trustee to give such consent or take such action.

If the property trustee's consent is required under the junior subordinated indenture for any amendment, modification or termination of the junior subordinated indenture or the related series of junior subordinated notes, the property trustee is required to request the written direction of the holders of the trust securities, and the property trustee will vote as directed by a majority in liquidation amount of the trust securities voting together as a single class. Where any amendment, modification or termination under the junior subordinated indenture requires the consent of a super majority, however, the

property trustee may only give such consent at the direction of the holders of the same super majority of the holders of the trust securities. The property trustee is not required to take any such action in accordance with the directions of the holders of the trust securities unless the property trustee has obtained a tax opinion to the effect described above.

The holders of the capital securities are entitled to vote on certain modifications or amendments to the declaration of trust, as more particularly described below under "--Modification of the Declaration of Trust."

Any required approval or direction of holders of capital securities may be given at a separate meeting of holders of capital securities convened for such purpose, at a meeting of all of the holders of trust securities or by written consent. The regular trustees will mail to each holder of record of capital securities a notice of any meeting at which such holders are entitled to vote, or of any matter upon which action by written consent of such holders is to be taken. Each notice will include the following information:

- . the date of the meeting or the date by which the action is to be taken;
- . a description of any resolution proposed for adoption or for which written consent is sought; and
- . instructions for the delivery of proxies or consents.

No vote or consent of the holders of capital securities is required for a Trust to redeem and cancel capital securities or distribute junior subordinated notes in accordance with the Trust's declaration of trust.

Despite the fact that holders of capital securities are entitled to vote or consent under the circumstances described above, any of the capital securities that are owned by us or any entity directly or indirectly controlling or controlled by, or under direct or indirect common control with, us will not be entitled to vote or consent. Instead, these capital securities will be treated for such purpose as if they were not outstanding.

The procedures by which holders of capital securities may exercise their voting rights are described under the heading "--Book-Entry Only Issuance--The Depository Trust Company."

Modification of the Declaration Of Trust

A declaration of trust may be modified and amended if approved by a majority of the regular trustees and, in certain circumstances, the property trustee and the Delaware trustee. If, however, any proposed amendment provides for, or the regular trustees otherwise propose to effect:

- (1) any action that would adversely affect the powers, preferences or special rights of the trust securities, whether by way of amendment to the declaration of trust or otherwise, or
- (2) the dissolution, winding-up or termination of the Trust other than pursuant to the terms of the declaration of trust,

then the holders of the trust securities voting together as a single class will be entitled to vote on the amendment or proposal. Such amendment or proposal shall not be effective except with the

20

approval of holders of at least a majority in liquidation amount of the trust securities affected thereby. If, however, any amendment or proposal referred to in clause (1) above would adversely affect only the capital securities or only the common securities, then only holders of the affected class will be entitled to vote on such amendment or proposal, and the amendment or proposal shall not be effective except with the approval of holders of a majority in liquidation amount of that class of trust securities.

Notwithstanding the foregoing, no amendment or modification may be made to the declaration of trust if that amendment or modification would:

- . cause the Trust to be classified for United States federal income tax

purposes as other than a grantor trust;

- . reduce or otherwise adversely affect the powers of the property trustee in contravention of the Trust Indenture Act; or
- . cause the Trust to be deemed an "investment company" required to be registered under the Investment Company Act of 1940.

Mergers or Consolidations of the Trusts

A Trust may not consolidate, amalgamate or merge with or into, or be replaced by, or convey, transfer or lease its properties and assets substantially as an entirety, to us or any other person, except as described below. The Trust may, with the consent of the regular trustees but without the consent of the holders of the applicable trust securities, the property trustee or the Delaware trustee, consolidate, amalgamate or merge with or into, or be replaced by, a trust organized as such under the laws of any state if:

- . the successor entity, if not the Trust, either:
 - . expressly assumes all of the obligations of the Trust with respect to the trust securities, or
 - . substitutes for the trust securities other securities having substantially the same terms as the trust securities, so long as the successor securities rank the same as the trust securities in priority with respect to distributions and payments upon liquidation, redemption and otherwise;
- . we, as issuer of the junior subordinated notes, expressly acknowledge a trustee of such successor entity possessing the same powers and duties as the property trustee as the holder of the corresponding junior subordinated notes;
- . the capital securities or any successor securities are listed, or any successor securities will be listed upon notification of issuance, on any national or international securities exchange or with another organization, if any, on which the capital securities are then listed or quoted;
- . the merger, consolidation, amalgamation or replacement does not cause the capital securities, including any successor securities, to be downgraded by any nationally recognized statistical rating organization;
- . the merger, consolidation, amalgamation or replacement does not adversely affect the rights, preferences and privileges of the holders of the trust securities, including any successor securities, in any material respect, other than in connection with any dilution of the holders' interest in the new entity;
- . the successor entity has a purpose identical to that of the Trust;
- . prior to the merger, consolidation, amalgamation or replacement, we have received an opinion of counsel to the Trust to the effect that:

- . the merger, consolidation, amalgamation or replacement does not adversely affect the rights, preferences and privileges of the holders of the trust securities, including any successor securities, in any material respect, other than in connection with any dilution of the holders' interest in the new entity;
- . following the merger, consolidation, amalgamation or replacement, neither the Trust nor the successor entity will be required to register as an investment company under the Investment Company Act of 1940; and

- . following the merger, consolidation, amalgamation or replacement, the Trust or the successor entity will continue to be classified as a grantor trust for United States federal income tax purposes; and
- . we guarantee the obligations of the successor entity under the successor securities at least to the extent provided by the guarantees of the trust securities.

Notwithstanding the foregoing, a Trust may not, except with the consent of holders of 100% in liquidation amount of its trust securities, consolidate, amalgamate, merge with or into, or be replaced by any other entity or permit any other entity to consolidate, amalgamate, merge with or into, or replace it if such consolidation, merger, amalgamation or replacement would cause the Trust or the successor entity to be classified as other than a grantor trust for United States federal income tax purposes.

Book-Entry Only Issuance--The Depository Trust Company

Description of the Global Certificates. The capital securities will be issued only in book-entry form and shall be represented by one or more global certificates. DTC will act as securities depository for the capital securities, and the global certificates will be registered in the name of Cede & Co. (DTC's nominee).

DTC Procedures. DTC is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act. DTC holds securities that its participants deposit with DTC. DTC also facilitates the settlement among participants of securities transactions, such as transfers and pledges, in deposited securities through electronic computerized book-entry changes in participants' accounts, thereby eliminating the need for physical movement of securities certificates. Participants in DTC include securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations. DTC is owned by a number of its participants and by the New York Stock Exchange, Inc., the American Stock Exchange LLC, and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others such as securities brokers and dealers, banks and trust companies that clear through or maintain a custodial relationship with a participant, either directly or indirectly. The rules applicable to DTC and its participants are on file with the SEC.

Purchases of the capital securities within the DTC system must be made by or through participants, which will receive a credit for the capital securities on DTC's records. The ownership interest of each beneficial owner of the capital securities is in turn to be recorded on the participants' and indirect participants' records. Beneficial owners will not receive written confirmation from DTC of their purchases, but beneficial owners are expected to receive written confirmations providing details of the transactions, as well as periodic statements of their holdings, from the participants or indirect participants through which the beneficial owners purchase capital securities. Transfers of ownership interest in the capital securities are to be accomplished by entries made on the books of participants and indirect participants acting on behalf of beneficial owners. Beneficial owners will not receive certificates representing their

ownership interests in the capital securities, except in the event that use of the book-entry system for the capital securities is discontinued.

DTC has no knowledge of the actual beneficial owners of the capital securities. DTC's records reflect only the identity of the participants to whose accounts the capital securities are credited, which may or may not be the beneficial owners. The participants and indirect participants will remain responsible for keeping account of their holdings on behalf of their customers.

So long as DTC, or its nominee, is the registered owner or holder of a global certificate, DTC or such nominee, as the case may be, will be considered the sole owner or holder of the capital securities for all purposes under the applicable declaration of trust and the capital securities. No beneficial owner of an interest in a global certificate will be able to transfer that interest except in accordance with DTC's applicable procedures, in addition to those

provided for under the applicable declaration of trust.

DTC has advised us that it will take any action permitted to be taken by a holder of the capital securities, including the presentation of the capital securities for exchange as described below, only at the direction of one or more participants to whose account the DTC interests in the global certificates are credited and only in respect of such portion of the aggregate liquidation amount of the capital securities as to which the participant or participants has or have given the direction. Also, if there is an event of default under the capital securities, DTC will exchange the global certificates for certificated securities, which it will distribute to its participants in accordance with its customary procedures.

Conveyance of notices and other communications by DTC to participants, by participants to indirect participants, and by participants and indirect participants to beneficial owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Redemption notices in respect of the capital securities held in book-entry form will be sent to Cede & Co. If less than all of the capital securities are being redeemed, DTC will determine by lot the amount of interest of each participant to be redeemed.

Although voting with respect to the capital securities is limited, in those cases where a vote is required, neither DTC nor Cede & Co. will itself consent or vote with respect to the capital securities. Under its usual procedures, DTC would mail an omnibus proxy to the applicable Trust as soon as possible after the record date. The omnibus proxy assigns Cede & Co.'s consenting or voting rights to those participants to whose accounts the capital securities are allocated on the record date identified in a listing attached to the omnibus proxy.

Distributions on the capital securities held in book-entry form will be made to DTC in immediately available funds. DTC's practice is to credit participants' accounts on the relevant payment date in accordance with their respective holdings shown on DTC's records unless DTC has reason to believe that it will not receive payments on the payment date. Payments by participants and indirect participants to beneficial owners will be governed by standing instructions and customary practices and will be the responsibility of the participants and indirect participants and not of DTC, the applicable Trust, Bank of America or any other party, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of any distributions to DTC is the responsibility of the applicable Trust, disbursement of those payments to participants is the responsibility of DTC, and disbursement of those payments to the beneficial owners is the responsibility of participants and indirect participants.

Normally, a beneficial owner of an interest in a global certificate is not entitled to receive physical delivery of the capital securities. Accordingly, each beneficial owner must rely on the procedures of DTC to exercise any rights under the capital securities.

23

Although DTC has agreed to the foregoing procedures in order to facilitate transfers of interests in the global certificates among participants of DTC, DTC is under no obligation to perform or continue to perform such procedures, and such procedures may be discontinued at any time. Neither Bank of America nor any Trust will have any responsibility for the performance by DTC or its participants or indirect participants under the rules and procedures governing DTC. DTC may discontinue providing its services as securities depository with respect to the capital securities at any time by giving notice to the applicable Trust. If a successor securities depository is not obtained, definitive certificates representing the capital securities are required to be printed and delivered to the property trustee. Additionally, the applicable Trust, with our consent, may discontinue use of the system of book-entry transfers through DTC or any successor depository. In each of the above circumstances, we will appoint a paying agent with respect to the capital securities.

The laws of some jurisdictions require that certain purchasers of securities take physical delivery of securities in definitive form. These laws may impair the ability to acquire, hold or transfer beneficial interests in the global capital securities as represented by a global certificate.

The information in this section concerning DTC and DTC's system has been obtained from sources that we believe to be reliable, but we take no responsibility for the accuracy of the information.

Registrar, Transfer Agent and Paying Agent

Unless otherwise specified in the applicable prospectus supplement, The Bank of New York will act as registrar, transfer agent and paying agent for the capital securities.

Registration of transfers of capital securities will be effected without charge by or on behalf of the applicable Trust, but upon payment of, and the giving of any indemnity as the Trust or we may require with respect to, any tax or other governmental charges that may be imposed in connection with any transfer or exchange. A Trust may not register or cause to be registered the transfer of its capital securities after such capital securities have been called for redemption.

Information Concerning the Property Trustee

Other than during the occurrence and continuance of an event of default under a declaration of trust, the property trustee is required to perform only the duties that are specifically set forth in the applicable declaration of trust. Following the occurrence and during the continuance of an event of default, the property trustee must exercise the same degree of care and skill in the exercise of its rights and powers as a prudent person would exercise in the conduct of his or her own affairs under the circumstances. Subject to this provision, the property trustee is under no obligation to exercise any of the rights or powers vested in it by the applicable declaration of trust at the request of any holder of capital securities unless such holder offers indemnity reasonably satisfactory to the property trustee against the costs, expenses and liabilities that might be incurred. However, the holders of the capital securities will not be required to offer any indemnity if such holders, by exercising their voting rights, direct the property trustee to take any action following an event of default under the declaration of trust.

We and certain of our affiliates have from time to time maintained deposit accounts and conducted other banking transactions with the property trustee and its affiliated entities in the ordinary course of business. The property trustee also serves as trustee for certain series of our outstanding indebtedness under other indentures.

Governing Law

The declarations of trust will be governed by and construed in accordance with the internal laws of the State of Delaware.

24

DESCRIPTION OF THE JUNIOR SUBORDINATED NOTES

We may issue junior subordinated notes from time to time in one or more series under a base indenture between us and The Bank of New York, as indenture trustee, and a supplement to the base indenture in the form of a supplemental indenture or a resolution of our Board of Directors or of a special committee formed by our Board of Directors. With respect to any particular series of junior subordinated notes, the term "indenture" or "junior subordinated indenture" used in this prospectus is deemed to include any supplement to the base indenture with respect to that series. The terms of the junior subordinated notes will include those stated in the junior subordinated indenture and those made part of that indenture by reference to the Trust Indenture Act.

The Trusts will invest the proceeds from the issuance and sale of the trust securities in the junior subordinated notes. We have summarized the general terms and provisions of the notes in this section. The prospectus supplement for a specific series of capital securities also describes the specific terms of the related series of junior subordinated notes offered through that prospectus supplement. The following summary is not intended to be complete and is subject to, and qualified in its entirety by reference to, the junior subordinated indenture and the Trust Indenture Act. You should read the junior subordinated indenture for additional information before you purchase any capital securities. The base indenture and the form of supplemental indenture are filed as exhibits to the registration statement of which this prospectus is a part.

General

The junior subordinated notes are our direct unsecured obligations. The notes may be issued from time to time in one or more series that we establish under the junior subordinated indenture and are subordinated as described below under the heading "--Subordination." Neither the junior subordinated indenture

nor any other agreement limits the principal amount of junior subordinated notes or other indebtedness that we may issue.

Under circumstances involving the dissolution of a Trust, the related series of junior subordinated notes may be distributed to the holders of the trust securities in liquidation of that Trust, provided that any required regulatory approval is obtained. Only one series of junior subordinated notes will be issued to a Trust or the property trustee of the Trust in connection with the issuance of trust securities by the Trust.

The prospectus supplement relating to the particular series of junior subordinated notes will include specific terms relating to the offering. These terms will include some or all of the following:

- . the title and type of the notes;
- . the aggregate principal amount of the notes of that series;
- . the percentage of their principal amount at which the notes will be issued;
- . the date or dates the notes mature and the method for determining a maturity date, as well as any right to shorten or extend any maturity date;
- . with respect to interest:
 - . the interest rate or rates on the notes, which may be fixed or variable, or the method used to calculate that interest;
 - . the date interest will begin to accrue;
 - . the record and interest payment dates for the notes; and
 - . the right to extend the interest payment periods and the duration of such extension;

25

- . the place or places where:
 - . we can make payments on the notes;
 - . the notes can be surrendered for registration of transfer or exchange; and
 - . notices and demands can be given to us relating to the notes and under the junior subordinated indenture;
- . any optional redemption provisions that would permit us or the holders of notes to elect redemption of the notes before their final maturity;
- . any provisions for a sinking purchase or analogous fund;
- . the form of the notes and the terms and provisions relating to such form; and
- . any other specific terms of the notes.

When we use the term "holder" in this prospectus as to a registered note, we mean the person in whose name the note is registered in the security register.

Subordination

The junior subordinated notes are subordinate to all of our existing and future Senior Obligations, as defined below. This means that no payment of principal (including redemption payments), premium, if any, or interest on the junior subordinated notes may be made if:

- . any principal, premium, interest or any other payment due on any of our Senior Obligations has not been paid when due and such default continues; or
- . the maturity of any of our Senior Obligations has been accelerated because of a default.

Upon any distribution of our assets to creditors upon any dissolution, winding-up, liquidation or reorganization of Bank of America, whether voluntary or involuntary or in bankruptcy, insolvency, receivership or similar proceedings, all amounts due on all Senior Obligations must be paid in full before the holders of junior subordinated notes are entitled to receive or retain any payment.

If we violate the junior subordinated indenture by making a payment to holders of the junior subordinated notes in violation of the provisions

described above, then the holders of the junior subordinated notes will be deemed to have received the payments or distributions in trust for the benefit of, and will have to pay or transfer the payments to, the holders of the Senior Obligations outstanding at the time.

Because of the subordination, if we become insolvent, holders of Senior Obligations may receive more, ratably, and holders of the junior subordinated notes having a claim pursuant to those notes may receive less, ratably, than our other creditors. This type of subordination will not prevent an event of default from occurring under the junior subordinated indenture in connection with the junior subordinated notes.

The rights of the holders of the junior subordinated notes are subrogated to the rights of holders of our Senior Obligations to receive payments or distributions until the Senior Obligations are paid in full. Such Senior Obligations shall continue to be Senior Obligations and be entitled to the benefits of the subordination provisions regardless of any amendment, modification or waiver of any term of such Senior Obligations.

26

Except as described below, the term "Senior Obligations" means, with respect to Bank of America:

(1) the principal, any premium and interest with respect to

. indebtedness of Bank of America for money borrowed or purchased and similar obligations (whether or not such indebtedness is denominated as senior or subordinated); and

. indebtedness evidenced by securities, debentures, bonds or other similar instruments (whether or not denominated as senior or subordinated) issued by Bank of America;

(2) all capital lease obligations of Bank of America;

(3) all obligations of Bank of America issued or assumed as the deferred purchase price of property, all conditional sale obligations of Bank of America and all obligations of Bank of America under any title retention agreement (but excluding trade accounts payable arising in the ordinary course of business);

(4) all obligations of Bank of America for the reimbursement on any letter of credit, banker's acceptance or similar credit transaction;

(5) all obligations of Bank of America arising from off-balance sheet guarantees by Bank of America and direct credit substitutes and obligations of Bank of America associated with derivative products such as interest and foreign exchange rate contracts, commodity contracts, swap agreements (including interest rate and foreign exchange swap agreements), cap agreements, floor agreements, collar agreements, interest rate agreements, foreign exchange rate agreements, options, commodity futures contracts and commodity option contracts;

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

(7) all obligations of the type referred to in clauses (1)-(6) above of other persons secured by any lien on any property or asset of Bank of America (whether or not such obligation is assumed by Bank of America).

However, the term "Senior Obligations" does not include:

. any such indebtedness that by its terms is subordinated to or ranks equally with the junior subordinated notes; and

. any indebtedness between or among Bank of America or our affiliates, including all other debt securities and guarantees in respect of those debt securities, issued to (a) any Trust or a trustee of such Trust or (b) any other trust, or a trustee of such trust, partnership or other entity affiliated with Bank of America that is a financing vehicle of Bank of America (a "financing entity") in connection with the issuance by such financing entity of capital securities or other securities that rank equally with, or junior to, the capital securities.

Additional Interest

If, at any time while the property trustee is the holder of a series of junior subordinated notes, a Trust is required to pay any taxes, duties, assessments or governmental charges of whatever nature, other than withholding taxes, imposed by the United States or any other domestic taxing authority, then we will be required to pay additional interest on the junior subordinated notes. The amount of any additional interest will be an amount sufficient so that the net amounts received and retained by the Trust and the property trustee after paying any such taxes, duties, assessments or other governmental charges will be equal to the amounts that the Trust would have received and retained had no such taxes, duties, assessments or other governmental charges been imposed. This means that the Trust will be in the same position it would have been in if it did not have to pay such taxes, duties, assessments or other charges.

27

Form, Exchange, Registration, Transfer and Payment

The applicable prospectus supplement will identify the denominations in which the junior subordinated notes will be issued. No service charge will be made for any transfer or exchange of the junior subordinated notes. However, either we or the indenture trustee may require payment of a sum sufficient to cover any tax, fee or other government charge that is payable in connection with any such transfer or exchange.

Unless we state otherwise in the applicable prospectus supplement, principal, premium, if any, or any interest will be payable, and the junior subordinated notes may be surrendered for transfer or exchange, at the offices of The Bank of New York, as paying and authenticating agent. However, at our option we may pay interest by check mailed to the person entitled to such interest at such person's address as it appears on the security register. As long as the property trustee is the holder of junior subordinated notes, we will pay principal and interest on the notes to the account designated by the property trustee.

Option to Defer Interest Payments

We have the right under the junior subordinated indenture to defer interest payments on any series of the junior subordinated notes from time to time by extending the interest payment period for up to a number of consecutive interest payment periods that we will specify in the applicable prospectus supplement. We refer to this period as an "extension period." No extension period may extend beyond the stated maturity of the corresponding junior subordinated notes. At the end of the extension period, we shall pay all interest then accrued and unpaid, including any additional interest as described under the heading "--Additional Interest," together with compounded interest at the rate specified for the junior subordinated notes to the extent permitted by law. Any special considerations applicable to any such notes will be described in the applicable prospectus supplement.

Unless otherwise specified in the applicable prospectus supplement, if we exercise our deferral right, then during any extension period, we are subject to restrictions with respect to payments related to our capital stock and our indebtedness that ranks equally with or junior to the notes, as more particularly described below under the heading "--Certain Covenants of Bank of America."

We may extend an extension period prior to the end of such extension period, so long as the period, as extended, does not exceed the maximum number of consecutive interest payment periods we specify in the prospectus supplement and does not extend beyond the stated maturity of the notes. In addition, following the termination of an extension period and the payment of all deferred distributions and accrued interest, we may begin a new extension period, which must comply with the above requirements. No interest shall be due and payable during an extension period, except at the end of such period. However, we may prepay at any time all or any portion of the interest accrued during an extension period.

Prepayment

Unless otherwise specified in the applicable prospectus supplement, the

junior subordinated notes are not subject to any sinking fund and are not redeemable at the option of the holder. Unless otherwise specified in the applicable prospectus supplement, we may, at our option and subject to receipt of prior approval by the Federal Reserve Board, if required, prepay the junior subordinated notes of any series in whole at any time or in part from time to time. If the junior subordinated notes of any series may be prepaid only on or after a specified date or upon the satisfaction of additional conditions, the applicable prospectus supplement will specify such date or describe such conditions. Except as otherwise specified in the applicable prospectus supplement, the prepayment price for any junior subordinated note so prepaid will equal 100% of

28

the principal amount of such junior subordinated note plus accrued and unpaid interest to the prepayment date.

Except as otherwise specified in the applicable prospectus supplement, we may, at our option and subject to receipt of prior approval by the Federal Reserve Board, if required, prepay a series of junior subordinated notes in whole, but not in part, at any time within 90 days after the occurrence of a tax event, investment company event or capital treatment event, each as described under the heading "Description of Capital Securities--Redemption of Capital Securities" above, at a prepayment price equal to 100% of the principal amount of such junior subordinated notes then outstanding plus accrued and unpaid interest to the prepayment date.

Notice of any prepayment will be mailed at least 30 days but not more than 60 days before the redemption date to each holder of junior subordinated notes to be prepaid as it appears in the security register. Unless we default in payment of the prepayment price, on and after the prepayment date, interest will cease to accrue on such junior subordinated notes or the portions of such notes called for prepayment.

Certain Covenants of Bank of America

If (1) we shall have exercised our right to defer payments of interest on a series of junior subordinated notes, as described under the heading "--Option to Defer Interest Payments," or (2) junior subordinated notes of a series are held by a Trust and remain outstanding and either (a) there shall have occurred and be continuing an event of default under the junior subordinated indenture, or any payment failure, or (b) we shall be in default relating to our payment of any obligations under the guarantees relating to that Trust, then we shall not:

- . declare or pay any dividend on, make any distributions with respect to, or redeem, purchase, acquire or make a liquidation payment with respect to, any shares of our capital stock or make any guarantee payment with respect to the foregoing (other than (1) purchases or acquisitions of our shares of common stock in connection with the satisfaction by us of our obligations under any employee benefit plans, (2) as a result of a reclassification of our capital stock or the exchange or conversion of one class or series of our capital stock for another class or series of our capital stock or (3) the purchase of fractional interests in shares of our capital stock pursuant to an acquisition or the conversion or exchange provisions of our capital stock or the security being converted or exchanged); or
- . make any payment of interest, principal or premium, if any, on or repay, repurchase or redeem any debt securities (including guarantees) issued by us that rank equally with or junior to the junior subordinated notes.

In addition, if junior subordinated notes are issued to a Trust or a trustee of the Trust in connection with the issuance of the Trust's trust securities, then as long as such trust securities remain outstanding, we will:

- . maintain 100% direct or indirect ownership of the common securities of that Trust, unless a permitted successor of Bank of America succeeds to our ownership of such common securities;
- . use our reasonable efforts to cause that Trust to:
 - . remain a statutory business trust, except in connection with the distribution of corresponding junior subordinated notes to the holders of the trust securities in liquidation of such Trust, the redemption of all of the trust securities of the Trust, or certain mergers,

consolidations or amalgamations, each as permitted by the Trust's declaration of trust; and

- . otherwise continue not to be treated as an association taxable as a corporation or partnership for United States federal income tax purposes; and

29

- . use our reasonable efforts to cause each holder of such trust securities to be treated as owning an undivided beneficial interest in the corresponding junior subordinated notes.

Limitation on Mergers and Sales of Assets

The junior subordinated indenture generally permits a consolidation or merger between us and another entity. It also permits the sale or transfer by us of all or substantially all of our assets. These transactions are permitted if:

- . the resulting or acquiring entity, if other than us, is organized and existing under the laws of the United States or any state or the District of Columbia and expressly assumes all of our obligations under the junior subordinated indenture; and
- . immediately after the transaction, we or any successor company are not in default in the performance of any covenant or condition.

Upon any such consolidation, merger or transfer, the resulting or acquiring entity will be substituted for us in such indenture with the same effect as if it had been an original party to the indenture. As a result, such successor entity may exercise our rights and powers under the junior subordinated indenture, and we will be released from further liabilities and obligations under such indenture and under the junior subordinated notes.

Events of Default, Waiver and Notice

The junior subordinated indenture provides that the following events, if they have occurred and are continuing, are events of default relating to a series of junior subordinated notes:

- . certain events involving the bankruptcy, insolvency or reorganization of Bank of America; or
- . as long as the junior subordinated notes are held by a Trust or a trustee of the Trust, the voluntary or involuntary dissolution, winding up or other termination of that Trust, except in connection with the (1) distribution of the junior subordinated notes to the holders of the Trust's trust securities in liquidation of their interests in the Trust, (2) the redemption of all of the outstanding trust securities of the Trust, or (3) certain mergers, consolidations or amalgamations, each as permitted by the Trust's declaration of trust.

A default by us in payment obligations with respect to the junior subordinated notes or under the related guarantees does not constitute an event of default for purposes of the junior subordinated indenture. As long as the series of junior subordinated notes are held by a Trust or a trustee of the Trust, the holders of capital securities have certain rights to sue us directly upon a payment failure or if the property trustee fails to enforce its rights as holder of the notes, as more particularly described under the heading "Description of the Capital Securities--Events of Default, Payment Failures, Waiver and Notice."

If an event of default under the junior subordinated indenture occurs and continues with respect to a series of junior subordinated notes, either the indenture trustee or the holders of at least 25% in aggregate principal amount of the outstanding junior subordinated notes of that series may declare the principal of and all accrued but unpaid interest on such junior subordinated notes to be due and payable immediately. The holders of a majority in aggregate outstanding principal amount of such series of junior subordinated notes (or all series, as applicable) may annul such declaration in certain circumstances and waive such default. As long as the series of notes is held by a property trustee under a Trust for the benefit of the Trust's trust securities, the

property trustee, as sole holder of the notes, will have the right to exercise these rights and may be directed in such exercise by the holders of the capital securities. See "Description of the Capital Securities--Events of Default, Payment Failures, Waiver and Notice" and "--Voting Rights."

Prior to a declaration of acceleration, the holders of a majority in aggregate principal amount of such series of junior subordinated notes generally may waive on behalf of the holders of all such series of notes any default or event of default under the junior subordinated indenture other than:

- . a default in the payment of principal of, premium, if any, or interest on such junior subordinated notes;
- . a default in respect of covenants that cannot be modified or amended without the consent of each holder of such junior subordinated notes affected; or
- . a default in respect of certain other covenants described above under the heading "--Certain Covenants of Bank of America."

However, as long as the notes are held by a property trustee under a Trust for the benefit of the holders of the Trust's trust securities, any such waiver or modification requires the consent of the holders of at least a majority in liquidation preference (or, if the waiver or modification requires the consent of each holder of junior subordinated notes, then each holder) of the related trust securities.

The holders of a majority in aggregate principal amount of the outstanding junior subordinated notes of any and all series affected generally shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to or exercising any power of the indenture trustee under the junior subordinated indenture. However, the holders of such notes must offer to the indenture trustee reasonable indemnity against expenses and liabilities. As long as a series of notes is held by a property trustee under a Trust for the benefit of the Trust's trust securities, the property trustee, as sole holder of the notes, will have the right to exercise these rights and may be directed in such exercise by the holders of the capital securities. See "Description of the Capital Securities--Voting Rights."

Subject to the subordination provisions, described under the heading "--Subordination," the right of any holder of junior subordinated notes (including the property trustee) to receive payment of the principal of and premium, if any, and interest on such junior subordinated notes on or after the due dates therefor, or to institute suit for the enforcement of any such payment provisions, shall not be impaired or affected without the consent of such holder.

An event of default under the junior subordinated indenture is an event of default under the related declaration of trust, and the waiver of an event of default under the indenture is a waiver under the related declaration of trust. These provisions are more particularly described under the heading "Description of the Capital Securities--Events of Default, Payment Failures, Waiver and Notice."

Following the occurrence and during the continuance of an event of default, we are subject to restrictions with respect to payments related to our capital stock and our indebtedness that ranks equally with or junior to the junior subordinated notes, as more particularly described above under the heading "--Certain Covenants of Bank of America."

The indenture trustee is required to notify all holders of the junior subordinated notes of any events of default or note payment failures.

We are required to file an officers' certificate with the debt trustee each year that states, to the knowledge of the certifying officer, whether or not any defaults exist under the terms of the junior subordinated indenture.

Modification of Junior Subordinated Indenture

Under the junior subordinated indenture, our rights and obligations and the rights of holders of the junior subordinated notes may be modified or amended with the consent of the holders of at least a majority in aggregate principal amount of the outstanding junior subordinated notes of all series affected by the modification or amendment, acting as one class. However, no such

modification or amendment may, without the consent of the holders of each junior subordinated note affected thereby:

- . extend the fixed maturity of any junior subordinated note, except as set forth in the terms of the particular series of junior subordinated notes;
- . reduce the rate or extend the time of payment of interest on such junior subordinated note;
- . reduce the principal amount of or any premium on any junior subordinated note;
- . reduce any amount payable on redemption of any junior subordinated note;
- . make the principal of, or interest or premium on, such junior subordinated notes payable in any coin or currency other than that provided in such junior subordinated notes;
- . impair or affect the right of any holder of such junior subordinated notes to institute suit for the payment of such notes or the right of repayment, if any, at the option of the holder; or
- . reduce the percentage of outstanding junior subordinated notes required to consent to a modification or amendment of the junior subordinated indenture.

As long as the junior subordinated notes are held by the property trustee of a Trust, no modification of the junior subordinated indenture will be effective until the holders of a majority in liquidation preference of the Trust's trust securities have consented to such modification. If the consent of the holder of each outstanding junior subordinated note is required for such modification, such modification shall not be effective until each holder of related trust securities has consented to such modification.

We and the indenture trustee may enter into, without the consent of any holder of junior subordinated notes, any supplemental indenture under the junior subordinated indenture, to create any new series of junior subordinated notes or make any change in the indenture that generally does not materially adversely affect the rights of any holder of junior subordinated notes.

Discharge and Defeasance

We may discharge most of our obligations under the junior subordinated indenture if the junior subordinated notes have already been delivered to the indenture trustee for cancellation or the junior subordinated notes have either become due and payable or are by their terms due and payable within one year, or are to be called for redemption within one year. We discharge our obligations by depositing with the indenture trustee an amount sufficient to pay when due the principal of and premium, if any, and interest on all outstanding junior subordinated notes.

The junior subordinated indenture also provides that, if no event of default under the indenture has occurred and is continuing, we will be discharged from our obligations with respect to a series of junior subordinated notes if we deposit with the indenture trustee, in trust, money or United States government obligations sufficient to pay all of the principal of, and premium, if any, and any interest on, the notes of that series, on the dates the payments are due under the junior subordinated indenture and the terms of such notes.

To exercise this option, we are required to deliver to the indenture trustee an opinion of counsel that states that:

- . the deposit and related defeasance would not cause the holders of the junior subordinated notes of such series to recognize income, gain or loss for United States federal income tax purposes, which opinion must be accompanied by a private letter ruling to that effect received by us from the IRS or a revenue ruling pertaining to a comparable form of transaction to that effect published by the IRS; and
- . if the junior subordinated notes of that series are listed on any national

securities exchange, such notes will not be delisted as a result of the deposit and related defeasance.

The obligations under the junior subordinated indenture to register the transfer or exchange of junior subordinated notes, to replace stolen, lost or mutilated junior subordinated notes and to maintain paying agents and hold monies for payment in trust will continue, even if we exercise our defeasance and discharge option.

Book-Entry and Settlement

If junior subordinated notes are distributed to holders of capital securities in liquidation of such holders' interests in a Trust, DTC will act as securities depository for the junior subordinated notes and the notes previously registered in the name of the property trustee on behalf of the Trust will be re-registered in the form of one or more global certificates in the name of the depository or its nominee. Each global certificate is referred to as a "global security."

Except in limited circumstances, owners of beneficial interests in such a global security will not be entitled to receive physical delivery of junior subordinated notes in definitive form and will not be considered the holders, as defined in the junior subordinated indenture, of such global security for any purpose under the junior subordinated indenture. A global security representing junior subordinated notes is only exchangeable for another global security of like denomination to be registered in the name of the depository or its nominee or to a successor depository or its nominee. The global securities may not be transferred except by the depository to a nominee of the depository or by a nominee of the depository to the depository or another nominee of the depository or to a successor depository or its nominee. This means that each beneficial owner must rely on the procedures of the depository, or if such beneficial owner is not a participant, on the procedures of the participant through which such person owns its interest, to exercise any rights of a holder under the indenture.

As of the date of this prospectus, the description in this prospectus of DTC's book-entry system and DTC's practices as they relate to purchases, transfers, notices and payments relating to the capital securities apply in all material respects to any debt obligations such as the junior subordinated notes represented by one or more global securities held by DTC. We may appoint a successor to DTC or any successor depository in the event DTC or such successor depository is unable or unwilling to continue as a depository for the global securities. For a description of DTC and the specific terms of the depository arrangements, see "Description of the Capital Securities -- Book-Entry Only Issuance -- The Depository Trust Company."

Governing Law

The junior subordinated indenture and the junior subordinated notes will be governed by, and construed in accordance with, the internal laws of the State of New York.

The Indenture Trustee

We and certain of our affiliates have from time to time maintained deposit accounts and conducted other banking transactions with the indenture trustee and its affiliated entities in the ordinary course of business. The indenture trustee also serves as trustee for certain series of our outstanding indebtedness under other indentures.

Under the junior subordinated indenture, we may remove the indenture trustee and appoint a successor trustee in certain circumstances relating to the indenture trustee's conflicts of interest or eligibility or ability to continue as indenture trustee. In addition, the holders of a majority in principal amount of a series of junior subordinated notes may remove the indenture trustee with respect to that series and nominate a successor trustee.

Miscellaneous

Bank of America will pay all costs and expenses in connection with the transactions described in this prospectus, including those related to:

- . the offering, sale and issuance of trust securities and the related junior subordinated notes, including any underwriting commissions;

33

- . the organization, maintenance and dissolution and the operation of each Trust;
- . the retention of the indenture trustee and the trustees under each declaration of trust;
- . indemnification obligations under each declaration of trust;
- . all taxes (other than United States withholding taxes relating to a Trust).

We have the right at all times to assign any of our respective rights or obligations under the junior subordinated indenture to a direct or indirect wholly-owned subsidiary of Bank of America. If we assign any of our rights or obligations, however, we will remain liable for all of their respective obligations. Subject to this right of assignment, the junior subordinated indenture will be binding upon and inure to the benefit of the parties to such indenture and their respective successors and assigns. The parties to the junior subordinated indenture may not otherwise assign such indenture.

DESCRIPTION OF GUARANTEE

Set forth below is a summary of information concerning the guarantee that we will execute and deliver for the benefit of the holders of a series of capital securities when a Trust issues its trust securities. Each guarantee will be qualified as an indenture under the Trust Indenture Act. The Bank of New York will act as the guarantee trustee. The terms of the guarantee will be those set forth in the guarantee and those made part of the guarantee by the Trust Indenture Act. The guarantee trustee will hold the guarantee for the benefit of the holders of the related capital securities. The following summary is not intended to be complete and is subject to, and qualified in its entirety by reference to, the provisions of the guarantee and the Trust Indenture Act. The form of guarantee is filed as an exhibit to the registration statement of which this prospectus is a part.

General

A guarantee is held by the guarantee trustee for the benefit of the holders of the capital securities. Under each guarantee, we will irrevocably and unconditionally agree to pay, when due, to the holders of the capital securities issued by a Trust, the following payments or distributions, which are referred to as "guarantee payments," without duplication:

- . any accrued and unpaid distributions that are required to be paid on the capital securities, to the extent the Trust has funds available for distributions;
- . the redemption price, including all accrued and unpaid distributions, relating to any capital securities called for redemption by the Trust, to the extent such Trust has funds available for redemptions; and
- . upon a voluntary or involuntary dissolution, winding-up or termination of such Trust, other than in connection with the distribution of junior subordinated notes held by such Trust to the holders of capital securities, the lesser of:
 - . the aggregate of the liquidation amount and all accrued and unpaid distributions on the capital securities to the date of payment, to the extent the Trust has funds available for liquidations; and
 - . the amount of assets of the Trust remaining available for distribution

to holders of the capital securities in liquidation of the Trust.

The redemption price and liquidation amount will be fixed at the time the capital securities are issued and will be described in the applicable prospectus supplement relating to the offering of such capital securities.

We may satisfy our obligation to make a guarantee payment by direct payment of the required amounts to the holders of capital securities or by causing the applicable Trust to pay such amounts to the holders.

34

A guarantee will not apply to any payment of distributions except to the extent the related Trust has funds available for such payments. If we do not make interest payments on the junior subordinated notes held by a Trust, the Trust will not pay distributions on its capital securities and will not have funds available for such payments. In such case, holders of the capital securities would not be able to rely on the related guarantee for payment of these amounts.

A guarantee, when taken together with our obligations under the related junior subordinated notes held by the Trust, the junior subordinated indenture and the declaration of trust, including our obligations to pay costs, expenses, debts and liabilities of that Trust (other than those relating to trust securities), will provide a full and unconditional guarantee on a subordinated basis of payments due on the capital securities.

Unless otherwise specified in the applicable prospectus supplement, we will also agree separately to irrevocably and unconditionally guarantee the obligations of each Trust with respect to the common securities issued by that Trust to the same extent as the capital securities guarantee. However, if an event of default under the junior subordinated indenture has occurred and is continuing, holders of capital securities shall have priority over holders of common securities with respect to payments under the respective guarantees, as more particularly described under the heading "--Status of the Guarantee."

Amendment and Assignment

A guarantee may be amended only with the prior approval of the holders of at least a majority in liquidation amount of the outstanding capital securities of the applicable Trust. No vote will be required, however, for any changes that do not adversely affect the rights of holders of such capital securities.

Termination of the Guarantee

A guarantee will terminate as to the capital securities of the applicable Trust upon:

- . full payment of the redemption price of all such capital securities;
- . the distribution of the corresponding junior subordinated notes to the holders of such capital securities; or
- . full payment of the amounts payable in accordance with the applicable declaration of trust upon liquidation or dissolution of the Trust.

However, the guarantee will continue to be effective or will be reinstated, as the case may be, if at any time any holder of related capital securities must restore payment of any sums paid under the related capital securities or the guarantee.

Events of Default

An event of default under a guarantee will occur if we fail to perform any payment obligation or other obligation under the guarantee. The holders of a

majority in liquidation amount of the related capital securities may waive, on behalf of all holders of such capital securities, any past event of default.

The holders of a majority in liquidation amount of the related capital securities have the right to direct the time, method and place of conducting any proceeding for any remedy available to the guarantee trustee in respect of the applicable guarantee or to direct the exercise of any trust or power conferred upon the guarantee trustee under the guarantee. If the guarantee trustee fails to enforce its rights under a guarantee, any holder of related capital securities may institute a legal proceeding directly against us to enforce the guarantee trustee's rights and our obligations under the applicable guarantee, without first instituting a legal proceeding against the applicable Trust, the guarantee trustee or any other person or entity.

35

Following the occurrence and during the continuance of an event of default under the guarantee, we are subject to restrictions with respect to payments related to our capital stock and our indebtedness that ranks equally with or junior to the junior subordinated notes, as more particularly described under the heading "Description of the Junior Subordinated Notes--Certain Covenants of Bank of America."

Status of the Guarantee

A guarantee will constitute an unsecured obligation of Bank of America and will rank:

- . subordinate and junior in right of payment to all our other liabilities, including contingent liabilities;
- . equally with the most senior preferred or preference stock now or hereafter issued by us and with any guarantee now or hereafter entered into by us with respect to (a) any preferred or preference stock of any of our affiliates and (b) any affiliate's trust preferred or similar capital securities; and
- . senior to our common stock.

The terms of each series of capital securities provide that each holder of such capital securities by acceptance of such securities agrees to the subordination provisions and other terms of the related guarantee.

A guarantee will constitute a guarantee of payment and not of collection. This means that the guaranteed party may sue us, as guarantor, to enforce its rights under the guarantee without suing any other person or entity.

Information Concerning the Guarantee Trustee

Other than during the occurrence and continuance of an event of default under a guarantee, the guarantee trustee is required to perform only the duties that are specifically set forth in such guarantee. Following the occurrence and during the continuance of an event of default, the guarantee trustee must exercise the same degree of care and skill in the exercise of its rights and powers as a prudent person would exercise in the conduct of his or her own affairs under the circumstances. Subject to this provision, the guarantee trustee is under no obligation to exercise any of the rights or powers vested in it by the guarantee, unless offered reasonable indemnity against the costs, expenses and liabilities which might be incurred thereby.

Under the guarantee, unless an event of default has occurred and is continuing, we may remove the guarantee trustee at any time and appoint a successor trustee.

We and certain of our affiliates have from time to time maintained deposit accounts and conducted other banking transactions with the guarantee trustee and its affiliated entities in the ordinary course of business. The guarantee

trustee also serves as trustee for certain series of our outstanding indebtedness under other indentures.

Governing Law

A guarantee will be governed by and construed in accordance with the internal laws of the state of New York.

EFFECT OF OBLIGATIONS UNDER THE JUNIOR SUBORDINATED NOTES AND THE GUARANTEE

The sole purpose of a Trust is to issue trust securities and to invest the proceeds in the corresponding junior subordinated notes. As long as we pay interest and other payments when due on the applicable series of junior subordinated notes, those payments will be sufficient to cover the distribution, redemption and liquidation payments due on the related trust securities. This is due to the following factors:

- . the aggregate principal amount of the applicable junior subordinated notes will be equal to the sum of the aggregate liquidation amount of the related trust securities;
- . the interest rate and the interest and other payment dates on the applicable junior subordinated notes will be the same as the distribution rate and the distribution and other payment dates for the related trust securities;
- . under the junior subordinated indenture, we will pay for any and all costs, expenses and liabilities of the applicable Trust, except withholding taxes and the applicable Trust's obligations to holders of the related trust securities; and
- . the applicable declaration of trust provides that the applicable Trust will not engage in any activity that is not consistent with the limited purposes of the Trust.

We will guarantee distribution, redemption and liquidation payments due on the capital securities of the Trust to the extent the Trust has funds available for those payments. If we do not make interest or other payments on the related series of junior subordinated notes, the Trust will not have sufficient funds to pay distributions or other payments on the capital securities. The guarantee does not apply to any payment of distributions unless and until the Trust has sufficient funds for the payment of those distributions.

A holder of capital securities may institute a direct action against us if we fail to make interest or other payments on the junior subordinated notes when due, taking account of any extension period. A direct action may be brought without first:

- . directing the property trustee to enforce the terms of the corresponding junior subordinated notes; or
- . suing us to enforce the property trustee's rights under such junior subordinated notes.

In connection with such direct action, we will be subrogated to the rights of such holder of capital securities under the applicable declaration of trust to the extent of any payment made by us to such holder of capital securities. Consequently, we will be entitled to payment of amounts that a holder of capital securities receives in respect of an unpaid distribution to the extent that such holder has already received payment relating to such unpaid distribution from the Trust.

The guarantee trustee will enforce the capital securities guarantees on behalf of the holders of the capital securities. If we fail to make payments under a guarantee, the holders of the related capital securities may direct the guarantee trustee to enforce its rights under such guarantee. If the guarantee trustee fails to enforce the guarantee, any holder of related capital securities may directly sue us to enforce the guarantee trustee's rights under the guarantee. Such holder is not required to first sue the applicable Trust, the guarantee trustee, or any other person or entity. A holder of capital securities may also directly sue us to enforce such holder's right to receive payment under the guarantee. Such holder is not required to first direct the guarantee trustee to enforce the terms of the guarantee or sue such Trust or any other person or entity.

37

UNITED STATES FEDERAL INCOME TAXATION

The following is a general discussion of the material United States federal income tax considerations that may be relevant to a beneficial owner of capital securities. The summary is based on laws, regulations, rulings and decisions now in effect, all of which are subject to change, possibly with retroactive effect. This summary deals only with a beneficial owner of capital securities that purchases the capital securities upon original issuance and who will hold the capital securities as capital assets. This summary does not address tax considerations applicable to investors to whom special tax rules may apply, such as banks, tax-exempt entities, insurance companies, regulated investment companies, common trust funds, dealers in securities or currencies, persons that will hold the capital securities as part of an integrated investment, including a straddle or conversion transaction, comprised of a capital security and one or more other positions or United States holders (as defined below) that have a functional currency other than the U.S. dollar.

For purposes of this discussion, a "United States holder" is a beneficial owner of capital securities that is a citizen or resident of the United States, a corporation, partnership or other entity created or organized in or under the laws of the United States, any state thereof or the District of Columbia, an estate the income of which is subject to United States federal income taxation regardless of its source or a trust if a United States court is able to exercise primary supervision over the trust's administration and one or more United States persons have the authority to control all of the trust's substantial decisions. The term "non-United States holder" means a beneficial owner of capital securities that is not a United States holder.

Investors should consult their own tax advisors in determining the tax consequences to them of purchasing, holding and disposing of capital securities, including the application to their particular situation of the United States federal income tax considerations discussed below, as well as the application of state, local, foreign or other tax laws.

Classification of the Junior Subordinated Notes

In connection with the issuance of the junior subordinated notes, Stroock & Stroock & Lavan LLP, special tax counsel to Bank of America and the Trusts, will render its opinion generally to the effect that, under then current law and assuming full compliance with the terms of the indenture and other relevant documents, and based on the facts and assumptions contained in such opinion, the junior subordinated notes held by the Trusts will be classified for United States federal income tax purposes as indebtedness of Bank of America.

Classification of the Trusts

In connection with the issuance of the capital securities, Stroock & Stroock & Lavan LLP will render its opinion generally to the effect that, under then current law and assuming full compliance with the terms of the declaration, the indenture and other relevant documents, and based on the facts and assumptions contained in such opinion, each Trust will be classified for United States federal income tax purposes as a grantor trust and not as an association taxable as a corporation. Accordingly, for United States federal income tax purposes, each holder of capital securities of a Trust generally will be considered the owner of an undivided interest in the junior subordinated notes owned by such Trust, and each holder will be required to include in its gross income, in accordance with its method of accounting, all interest or original issue discount ("OID") earned, and any gain recognized, with respect to its allocable share of the junior subordinated notes.

38

United States Holders

Interest Income and OID. Under the terms of the indenture, Bank of America has the ability to defer payments of interest on the junior subordinated notes

by extending the interest payment period. However, if that option is exercised, Bank of America would be prevented from declaring or paying dividends on its stock and from making any payments on debt securities that rank pari passu with or junior to the junior subordinated notes. Under applicable Treasury regulations, a "remote" contingency that stated interest will not be timely paid will be ignored in determining whether a debt instrument is issued with OID. Because of the payment limitations described in the second preceding sentence, Bank of America believes, and this discussion assumes, that the likelihood Bank of America will exercise its option to defer interest payments is remote within the meaning of the regulations. Accordingly, the junior subordinated notes will not be treated as having been issued with OID and each holder of capital securities should include in gross income such holder's allocable share of interest on the junior subordinated notes in accordance with such holder's method of tax accounting. It should be noted, however, that no ruling or other guidance has been issued by the Internal Revenue Service addressing the meaning of the term "remote" as used in these Treasury regulations. Thus, it is possible that the IRS could take a position contrary to the interpretation described above.

In contrast, if the option to defer any payment of interest was determined not to be "remote," or if Bank of America exercised such option, the junior subordinated notes would be treated as issued with OID. In that case, all stated interest (or remaining stated interest, if the deferral option was exercised) on the junior subordinated notes would be treated as OID and would have to be included in a United States holder's taxable income on an economic accrual basis without regard to whether any cash payments were received and without regard to such holder's method of tax accounting. Consequently, during an extension period, a holder of capital securities would be required to include OID in gross income even though Bank of America would not make any actual cash payments.

Because income on the capital securities will constitute interest or OID, corporate holders of capital securities are not entitled to a dividends-received deduction for any income received or accrued on the capital securities.

Receipt of Junior Subordinated Notes or Cash Upon Liquidation of Trusts. Under certain circumstances, junior subordinated notes may be distributed to holders in exchange for capital securities upon the liquidation of the Trusts, as described under the headings "Description of the Capital Securities--Distribution of Junior Subordinated Notes" and "-- Liquidation Distribution Upon Dissolution." Under current law, such a distribution would be treated, for United States federal income tax purposes, as a non-taxable event to each United States holder, and each United States holder would receive an aggregate tax basis in the junior subordinated notes received that is equal to such holder's aggregate tax basis in the capital securities exchanged. A United States holder's holding period in the junior subordinated notes received in liquidation of the Trusts would include the period during which the capital securities were held by such holder.

Under certain circumstances described in this prospectus, the junior subordinated notes may be prepaid for cash and the proceeds of such prepayment distributed by the Trusts to holders in redemption of their capital securities. Under current law, such a redemption would, for United States federal income tax purposes, constitute a taxable disposition of the redeemed capital securities. Accordingly, a United States holder could recognize gain or loss as if it had sold such redeemed capital securities for cash. See "--Sales of Capital Securities" below and "Description of the Capital Securities--Redemption of Capital Securities".

Sales of Capital Securities. A United States holder that sells capital securities will be considered to have disposed of all or part of its ratable share of the junior subordinated notes. Such a United States holder will recognize gain or loss equal to the difference between its

adjusted tax basis in the capital securities and the amount realized on the sale of such capital securities. Assuming that Bank of America does not exercise its option to defer payment of interest on the junior subordinated notes and that the junior subordinated notes are not deemed to be issued with OID, a United States holder's adjusted tax basis in the capital securities generally will be its initial purchase price. If the junior subordinated notes are deemed to be issued with OID, a United States holder's tax basis in the capital securities generally will be its initial purchase price, increased by OID previously includible in such United States holder's gross income to the date of disposition and decreased by distributions or other payments received on the capital securities since and including the date that the junior subordinated notes were deemed to be issued with OID. Such gain or loss

generally will be a capital gain or loss, except to the extent of any accrued interest relating to such United States holder's ratable share of the junior subordinated notes required to be included in income, and generally will be a long-term capital gain or loss if the capital securities have been held for more than one year.

If Bank of America exercises its option to defer payment of interest on the junior subordinated notes, the capital securities may trade at a price that does not fully reflect the accrued but unpaid interest relating to the underlying junior subordinated notes. In the event of such a deferral, a United States holder who disposes of its capital securities between record dates for payments of distributions will be required to include in income as ordinary income accrued but unpaid interest on the junior subordinated notes to the date of disposition and to add such amount to the adjusted tax basis of its capital securities. To the extent the selling price is less than the holder's adjusted tax basis, such holder will recognize a capital loss. Capital losses generally cannot be applied to offset ordinary income for United States federal income tax purposes.

Information Reporting and Backup Withholding. Generally, income on the capital securities will be reported to the IRS and to holders on Forms 1099-INT, which forms should be mailed to holders of capital securities by January 31 following each calendar year. In addition, United States holders may be subject to a 30.5% backup withholding tax (to be reduced gradually to 28% effective 2006 and increased to 31% effective 2011) on such payments if they do not provide their taxpayer identification numbers to the trustee in the manner required, fail to certify that they are not subject to backup withholding tax, or otherwise fail to comply with applicable backup withholding tax rules. United States holders may also be subject to information reporting and backup withholding tax with respect to the proceeds from a sale, exchange, retirement or other taxable disposition of the capital securities.

Non-United States Holders

Under current United States federal income tax law, payments of principal and interest, including OID, with respect to a capital security that are made to a non-United States holder will not be subject to withholding of United States federal income tax, provided that:

- . the holder of the capital security does not actually or constructively own 10% or more of the total combined voting power of all classes of stock of Bank of America entitled to vote;
- . the holder of the capital security is not a controlled foreign corporation related to Bank of America through stock ownership;
- . the holder of the capital security is not a bank receiving interest on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of its trade or business; and
- . the holder of the capital security provides a statement signed under penalties of perjury that includes its name and address and certifies that it is a non-United States holder in compliance with applicable requirements and satisfies documentary evidence requirements for establishing that it is a non-United States holder.

40

Moreover, a non-United States holder will not be subject to United States federal income tax on gain realized on the sale, exchange, retirement or other taxable disposition of a capital security, unless, in the case of an individual, such holder is present in the United States for 183 days or more in the taxable year of the retirement or disposition and certain other conditions are met. However, a non-United States holder that is subject to United States federal income taxation on a net income basis generally will be taxable under the same rules that govern the taxation of a United States holder receiving or accruing interest on a capital security or realizing or recognizing gain or loss on the sale, exchange, retirement or other taxable disposition of a capital security. Special rules might also apply to a non-United States holder that is a qualified resident of a country with which the United States has an income tax treaty.

United States information reporting requirements and backup withholding tax will not apply to payments on a capital security if the beneficial owner (1) certifies its status as a non-United States holder under penalties of perjury and also satisfies documentary evidence requirements for establishing that it is a non-United States holder, or (2) otherwise establishes an exemption. In addition, information reporting requirements and backup withholding tax will not apply to any payment of the proceeds of the sale of a capital security effected outside the United States by a foreign office of a foreign broker, provided that such broker derives less than 50% of its gross income for particular periods from the conduct of a trade or business in the United States, is not a controlled foreign corporation for United States federal

income tax purposes, and is not a foreign partnership that, at any time during its taxable year, is 50% or more, by income or capital interest, owned by United States holders or is engaged in the conduct of a United States trade or business. Backup withholding tax will also not apply to the payment of the proceeds of the sale of a capital security effected outside the United States by a foreign office of any other foreign or any U.S. broker. However, information reporting requirements will be applicable to such payment unless (1) such broker has documentary evidence in its records that the beneficial owner is a non-United States person and other conditions are met or (2) the beneficial owner otherwise establishes an exemption.

Information reporting requirements and backup withholding tax will apply to the payment of the proceeds of a sale of a capital security by the United States office of a broker, unless the beneficial owner certifies its status as a non-United States holder under penalties of perjury or otherwise establishes an exemption.

For purposes of applying the above rules for non-United States holders to a person or entity that is treated as fiscally transparent, e.g., nominees, partnerships and certain trusts, the holder means each of the ultimate beneficial owners of the capital securities. In addition, the fiscally transparent person or entity will be required to provide the payor with a properly completed and executed IRS Form W-8IMY.

THE UNITED STATES FEDERAL INCOME TAX DISCUSSION SET FORTH ABOVE IS INCLUDED FOR GENERAL INFORMATION ONLY AND MAY NOT BE APPLICABLE DEPENDING UPON A HOLDER'S PARTICULAR SITUATION. HOLDERS SHOULD CONSULT THEIR TAX ADVISORS RELATING TO THE TAX CONSEQUENCES TO THEM OF THE PURCHASE, OWNERSHIP AND DISPOSITION OF THE CAPITAL SECURITIES, INCLUDING THE TAX CONSEQUENCES UNDER STATE, LOCAL, FOREIGN AND OTHER TAX LAWS AND THE POSSIBLE EFFECTS OF CHANGES IN UNITED STATES FEDERAL OR OTHER TAX LAWS.

41

PLAN OF DISTRIBUTION

We and the Trusts may sell the securities offered under this prospectus to or through underwriters or dealers, through agents or directly to other purchasers. The underwriters, dealers or agents may include Banc of America Securities LLC or any of our other affiliates. Each prospectus supplement will state the terms of the securities to be offered, including the names of any underwriters or agents, the public offering or purchase price of the securities and the net proceeds we or the trust will receive from the sale, any underwriting discounts and other items constituting underwriters' compensation, any discounts and commissions allowed or paid to dealers, any commissions allowed or paid to agents, and if the securities will be listed on a securities exchange or exchanges, the identity of any exchange.

Securities may be purchased to be reoffered to the public through underwriting syndicates led by one or more managing underwriters, or through one or more underwriters acting alone. The underwriters may acquire the securities for their own account and may resell the securities from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or varying prices determined at the time of sale. If an underwriting syndicate is used, we will list the managing underwriter or underwriters on the cover page of the prospectus supplement. Unless otherwise stated in the prospectus supplement, the obligations of the underwriters to purchase the securities will be subject to certain conditions and each of the underwriters will be obligated to purchase all of its securities if any are purchased. Any initial public offering price and any discounts or concessions allowed or reallocated or paid to dealers may be changed from time to time.

We and the Trusts may offer and sell securities through agents from time to time. We will name any agent involved in the offer and sale of any securities and describe any commissions payable by us to the agent in the prospectus supplement. Unless otherwise indicated in the prospectus supplement, the agent will be acting on a best efforts basis during the appointment period.

We and the Trusts may sell directly to, and solicit orders from, institutional investors or others who may be deemed to be underwriters as defined in the Securities Act for any resale of the securities. We will describe the terms of any such sales in the prospectus supplement.

Securities may be sold in connection with a remarketing after their purchase by one or more firms including our affiliates, acting as principal for their accounts or as our agent.

Any underwriter or agent participating in the distribution of the securities

may be considered to be an underwriter, as that term is defined in the Securities Act, of the securities being offered and sold. Any discounts or commissions received by them from us or a Trust and any profit realized by them on the sale or resale of the securities may be considered to be underwriting discounts and commissions under the Securities Act.

To facilitate offering the securities, the underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of the securities or any other securities the prices of which may be used to determine payments on such securities. Specifically, the underwriters may over allot in connection with an offering, creating a short position in the securities for their own accounts. In addition, to cover over allotments or to stabilize the price of the securities or of any other securities, the underwriters may bid for, and purchase, the securities or any other securities in the open market. Finally, in any offering of the securities through a syndicate of underwriters, the underwriting syndicate may reclaim selling concessions allowed to an underwriter or a dealer for distributing the securities in the offering if the syndicate repurchases previously distributed securities in transactions to cover syndicate short positions, in stabilization transactions or otherwise. Any of these activities may stabilize or maintain the market price of the securities above independent market levels. The underwriters are not required to engage in these activities and may end any of these activities at any time.

42

Since any series of securities offered and sold pursuant to this prospectus may be a new issue with no established trading market, there may not be a liquid trading market for the security.

Under agreements entered into with us or a Trust, underwriters and agents may be entitled to indemnification by us or a Trust against certain civil liabilities, including liabilities under the Securities Act, or to contribution for payments the underwriters or agents may be required to make.

Banc of America Securities LLC is a broker-dealer and one of our subsidiaries and, as such, is an affiliate of the Trusts. Following the initial distribution of securities, our affiliates, including Banc of America Securities LLC, may buy and sell the securities in secondary market transactions as part of their business as a broker-dealer. Any sale will be at negotiated prices relating to prevailing prices at the time of sale. This prospectus and related prospectus supplements may be used by one or more of our affiliates in connection with offers and sales related to secondary market transactions in the securities to the extent permitted by applicable law. Any of our affiliates may act as principal or agent in such transactions.

The underwriters, agents and their affiliates may engage in financial or other business transactions with us and our subsidiaries in the ordinary course of business.

Because the National Association of Securities Dealers, Inc. views the securities offered hereby as interests in a direct participation program, the offering is being made in compliance with Rule 2810 of the Conduct Rules of the National Association of Securities Dealers, Inc. Neither Banc of America Securities LLC nor any other member of the National Association of Securities Dealers, Inc. will execute a transaction in any discretionary account without the specific prior written approval of a customer.

The maximum underwriting compensation to be received by any member of the National Association of Securities Dealers, Inc. will not exceed ten percent of the initial gross proceeds of the securities sold, plus 0.5% for bona fide due diligence.

LEGAL MATTERS

Certain matters of Delaware law relating to the validity of the capital securities will be passed upon on behalf of the Trusts by Richards, Layton & Finger, P.A., special Delaware counsel to the Trusts. The validity of the junior subordinated notes and the guarantees and certain matters relating thereto will be passed upon for Bank of America by Smith Helms Mulliss & Moore, L.L.P. and for the underwriters by Stroock & Stroock & Lavan LLP. Certain United States federal income tax matters will be passed upon for Bank of America and the Trusts by Stroock & Stroock & Lavan LLP, special tax counsel to

Bank of America and the Trusts. Smith Helms Mulliss & Moore, L.L.P. and Stroock & Stroock & Lavan LLP will rely on the opinion of Richards, Layton & Finger, P.A. as to certain matters of Delaware law relating to the Trusts and the capital securities. As of the date of this prospectus, certain members of Smith Helms Mulliss & Moore, L.L.P. beneficially owned less than one-tenth of 1% of our outstanding shares of common stock.

EXPERTS

Our consolidated financial statements incorporated in this prospectus by reference to our annual report on Form 10-K for the year ended December 31, 2000 have been incorporated in reliance on the report of PricewaterhouseCoopers LLP, independent accountants, given on the authority of said firm as experts in auditing and accounting.

PART II.

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution

The estimated expenses, other than underwriting or broker-dealer fees, discounts and commissions, in connection with the offering are as follows:

<u><S></u>	<u><C></u>
Securities Act Registration Fee	\$ 500,000
NASD Fee.....	30,000
Printing and Engraving Expenses	350,000
Legal Fees and Expenses.....	450,000
Accounting Fees and Expenses...	100,000
Blue Sky Fees and Expenses.....	30,000
Trustee Fees.....	350,000
Rating Agency Fees and Expenses	120,000
Miscellaneous.....	25,000

	\$1,955,000
	=====

</TABLE>

Item 15. Indemnification of Directors and Officers

Subsection (a) of Section 145 of the Delaware General Corporation Law (the "DGCL") empowers a corporation to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. Subsection (b) of Section 145 of the DGCL empowers a corporation to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person acted in any of the capacities set forth above, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in accordance with the above standards, except that no indemnification may be made in respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which the action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expenses which the Court of Chancery or such other court shall deem proper.

Section 145 of the DGCL further provides that, to the extent that a director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b) of Section 145, or in the defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith; and that

indemnification provided by, or granted pursuant to, Section 145 shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled. Section 145 further empowers the corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liabilities under Section 145 of the DGCL.

Section 102(b)(7) of the DGCL permits a corporation's certificate of incorporation to contain a provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director; provided that such provision shall not eliminate or limit the liability of a director for (i) any breach of the director's duty of loyalty to the corporation or its stockholders; (ii) acts or omissions not in good faith or which involved intentional misconduct or a knowing violation of the law; (iii) willful or negligent unlawful payment of a dividend or stock purchase or redemption; or (iv) any transaction from which the director derived an improper personal benefit.

The Restated Certificate of Incorporation of Bank of America Corporation (the "Corporation") eliminates the ability to recover monetary damages against directors of the Corporation for breach of fiduciary duty to the fullest extent permitted by the DGCL. In accordance with the provisions of the DGCL, the Bylaws of the Corporation provide that, in addition to the indemnification of directors and officers otherwise provided by the DGCL, the Corporation shall, under certain circumstances, indemnify its directors, executive officers and certain other designated officers against any and all liability and litigation expense, including reasonable attorneys' fees, arising out of their status or activities as directors and officers, except for liability or litigation expense incurred on account of activities that were at the time known or believed by such director or officer to be in conflict with the best interests of the Corporation. Pursuant to such Bylaws and as authorized by statute, the Corporation may also maintain, and does maintain, insurance on behalf of its directors and officers against liability asserted against such persons in such capacity whether or not such directors or officers have the right to indemnification pursuant to the Bylaws or otherwise.

In addition, pursuant to the Agreement and Plan of Reorganization dated as of April 10, 1998 (the "Merger Agreement") between the Corporation, formerly NationsBank Corporation ("NationsBank") and the former BankAmerica Corporation ("old BankAmerica"), for six years after September 30, 1998 (the date of the consummation of the merger of old BankAmerica with and into the Corporation (the "Merger")), the Corporation will indemnify directors, officers and employees of old BankAmerica, NationsBank, or any of their respective subsidiaries against certain liabilities in connection with such persons' status as such or in connection with the Merger Agreement or any of the transactions contemplated thereby. Pursuant to the Merger Agreement, the Corporation will also, for six years after September 30, 1998 and with respect to events occurring prior to the consummation of the Merger, honor all rights to indemnification and limitations of liability existing in favor of the foregoing persons as provided in the governing documents of NationsBank, old BankAmerica or their respective subsidiaries.

Pursuant to the Merger Agreement, for six years after September 30, 1998, the Corporation will also use its best efforts to cause the directors and officers of old BankAmerica and NationsBank to be covered by a directors' and officers' liability insurance policy with respect to acts or omissions occurring prior to the consummation of the Merger.

The foregoing is only a general summary of certain aspects of Delaware law dealing with indemnification of directors and officers and does not purport to be complete. It is qualified in its

II-2

entirety by reference to the relevant statutes which contain detailed specific provisions regarding the circumstances under which and the persons for whose benefit indemnification shall or may be made.

The respective Declarations of Trust of BAC Capital Trust I, BAC Capital Trust II, BAC Capital Trust III and BAC Capital Trust IV (each a "Trust" and together the "Trusts") provide that to the fullest extent permitted by applicable law, the Corporation shall indemnify each of the regular trustees of the respective Trust, any affiliate of any such regular trustee, any officer, director, shareholder, member, partner, employee, representative or agent of any such regular trustee, or any employee or agent of the Trust or its affiliates (each a "Company Indemnified Person"), who was or is a party or is

threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Trust) by reason of the fact that he is or was a Company Indemnified Person against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Trust, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The Declarations of Trust also provide that, to the fullest extent permitted by applicable law, expenses (including reasonable attorneys' fees and expenses) incurred by a Company Indemnified Person in defending such a civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Company Indemnified Person to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in the Declaration of Trust. The Declarations of Trust further provide that no Company Indemnified Person, the Delaware Trustee (as defined therein), any affiliate of the Delaware Trustee, and any officers, directors, shareholders, members, partners, employees, representatives, nominees, custodians or agents of the Delaware Trustee (collectively, with a Company Indemnified Person, an "Indemnified Person"), shall not be liable, responsible or accountable in damages or otherwise to the Trust or any Covered Person (as defined therein) for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Indemnified Person in good faith on behalf of the Trust and in a manner such Indemnified Person reasonably believed to be within the scope of the authority conferred on such Indemnified Person by the Declaration of Trust or by law, except that an Indemnified Person shall be liable for any such loss, damage or claim incurred by reason of such Indemnified Person's gross negligence or willful misconduct with respect to such acts or omissions.

In addition, certain sections of the form of Underwriting Agreement filed as an Exhibit hereto provide for indemnification of the Corporation and the Trusts and their directors and officers or trustees by the underwriters or agents against certain liabilities, including certain liabilities under the Securities Act. From time to time similar provisions have been contained in other agreements relating to other securities of the Corporation.

Item 16. List of Exhibits

<TABLE>
<C> <S>
1.1 Form of Underwriting Agreement for offering of Capital Securities
4.1 Certificate of Trust of BAC Capital Trust I*
4.2 Certificate of Trust of BAC Capital Trust II*
4.3 Certificate of Trust of BAC Capital Trust III*
4.4 Certificate of Trust of BAC Capital Trust IV*
4.5 Declaration of Trust of BAC Capital Trust I*
4.6 Declaration of Trust of BAC Capital Trust II*
</TABLE>

II-3

<TABLE>
<C> <S>
4.7. Declaration of Trust of BAC Capital Trust III*
4.8 Declaration of Trust of BAC Capital Trust IV*
4.9 Form of Amended and Restated Declaration of Trust for each BAC Capital Trust
4.10 Restated Indenture between Bank of America Corporation and The Bank of New York,
as Trustee
</TABLE>

<TABLE>
<C> <S>
4.11 Form of Supplemental Indenture to be used in connection with the issuance of Junior Subordinated Notes*
4.12 Form of Preferred Security (included in 4.9 above)
4.13 Form of Junior Subordinated Note (included in 4.11 above)*
4.14 Form of Guarantee with respect to Capital Securities issued by the respective BAC Capital Trusts
5.1 Opinion of Smith Helms Mulliss & Moore, L.L.P.*
5.2 Opinion of Richards, Layton & Finger, P.A.*
8.1 Opinion of Stroock & Stroock & Lavan LLP*
12.1 Calculation of Ratios of Earnings to Fixed Charges, incorporated herein by reference to Exhibit 12(a) to the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2001 (File No. 1-6523)

12.2 Calculation of Ratios of Earnings to Fixed Charges and Preferred Stock Dividends, incorporated herein by reference to Exhibit 12(b) to the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2001 (File No. 1-6523)

23.1 Consent of PricewaterhouseCoopers LLP

23.2 Consent of Smith Helms Mulliss & Moore, L.L.P. (included in Exhibit 5.1)*

23.3 Consent of Richards, Layton & Finger, P.A. (included in Exhibit 5.2)*

23.4 Consent of Stroock & Stroock & Lavan LLP (included in Exhibit 8.1)*

24.1 Power of Attorney*

24.2 Certified Resolutions*

25.1 Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of The Bank of New York, as Indenture Trustee under the Restated Indenture*

25.2 Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of The Bank of New York, as Property Trustee under the Amended and Restated Declaration of Trust of BAC Capital Trust I*

25.3 Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of The Bank of New York, as Property Trustee under the Amended and Restated Declaration of Trust of BAC Capital Trust II*

25.4 Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of The Bank of New York, as Property Trustee under the Amended and Restated Declaration of Trust of BAC Capital Trust III*

25.5 Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of The Bank of New York, as Property Trustee under the Amended and Restated Declaration of Trust of BAC Capital Trust IV*

25.6 Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of The Bank of New York, as Guarantee Trustee under the Capital Securities Guarantee of Bank of America Corporation for the benefit of the holders of Capital Securities of BAC Capital Trust I*

25.7 Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of The Bank of New York, as Guarantee Trustee under the Capital Securities Guarantee of Bank of America Corporation for the benefit of the holders of Capital Securities of BAC Capital Trust II*

25.8 Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of The Bank of New York, as Guarantee Trustee under the Capital Securities Guarantee of Bank of America Corporation for the benefit of the holders of Capital Securities of BAC Capital Trust III*

</TABLE>

II-4

<TABLE>
<C> <S>
25.9 Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of The Bank of New York, as Guarantee Trustee under the Capital Securities Guarantee of Bank of America Corporation for the benefit of the holders of Capital Securities of BAC Capital Trust IV*

</TABLE>

<TABLE>
<C> <S>
99.1 Provisions of Delaware General Corporation Law relating to indemnification of directors and officers, incorporated herein by reference to Exhibit 99.1 of the Registrant's Registration Statement on Form S-3 (Registration No. 333-83503)

</TABLE>

- - - - -

* Previously filed with this Registration Statement.

Item 17. Undertakings.

Each of the undersigned Registrants hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to the Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement.

provided, however, that paragraphs (1)(i) and (1)(ii) above do not apply if the Registration Statement is on Form S-3 or Form S-8 and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

The undersigned Registrants hereby undertake that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

II-5

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

Each Registrant hereby undertakes (1) to use its best efforts to distribute prior to the opening of bids, to prospective bidders, underwriters, and dealers, a reasonable number of copies of a prospectus which at that time meets the requirements of Section 10(a) of the Securities Act, and relating to the securities offered at competitive bidding, as contained in the Registration Statement, together with any supplements thereto, and (2) to file an amendment to the Registration Statement reflecting the results of bidding, the terms of the reoffering and related matters to the extent required by the applicable form, not later than the first use, authorized by any Registrant after the opening of bids, of a prospectus relating to the securities offered at competitive bidding, unless no further public offering of such securities by any Registrant and no reoffering of such securities by the purchasers is proposed to be made.

Each Registrant hereby undertakes to file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act of 1939, as amended, in accordance with the rules and regulations prescribed by the Commission under Section 305(b)(2) of the Trust Indenture Act.

The undersigned Registrants hereby undertake that:

(1) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this Registration Statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrants pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this Registration Statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Amendment No. 1 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Charlotte, North Carolina, on November 15, 2001.

BANK OF AMERICA CORPORATION

By: * KENNETH D. LEWIS

 Kenneth D. Lewis
 Chairman of the Board, Chief
 Executive Officer and President

Pursuant to the requirements of the Securities Act of 1933, this Amendment No. 1 to the Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<TABLE> <CAPTION>		
Signature -----	Title -----	Date ----
<C>	<S>	<C>
* KENNETH D. LEWIS ----- Kenneth D. Lewis	Chairman of the Board, Chief Executive Officer, President and Director (Principal Executive Officer)	November 15, 2001
* JAMES H. HANCE, JR. ----- James H. Hance, Jr.	Vice Chairman, Chief Financial Officer and Director (Principal Financial Officer)	November 15, 2001
* MARC D. OKEN ----- Marc D. Oken	Executive Vice President and Principal Financial Executive (Principal Accounting Officer)	November 15, 2001
* JOHN R. BELK ----- John R. Belk	Director	November 15, 2001
* CHARLES W. COKER ----- Charles W. Coker	Director	November 15, 2001
* FRANK DOWD, IV ----- Frank Dowd, IV	Director	November 15, 2001
----- Kathleen Feldstein	Director	, 2001
* PAUL FULTON ----- Paul Fulton	Director	November 15, 2001
----- Donald E. Guinn	Director	, 2001

II-7

Signature -----	Title -----	Date ----
* C. RAY HOLMAN ----- C. Ray Holman	Director	November 15, 2001
* WALTER E. MASSEY -----	Director	November 15, 2001

Walter E. Massey

* C. STEVEN MCMILLAN Director November 15, 2001

C. Steven McMillan

* PATRICIA E. MITCHELL Director November 15, 2001

Patricia E. Mitchell

* O. TEMPLE SLOAN, JR. Director November 15, 2001

O. Temple Sloan, Jr.

* MEREDITH R. SPANGLER Director November 15, 2001

Meredith R. Spangler

----- Director , 2001

Ronald Townsend

* PETER V. UEBERROTH Director November 15, 2001

Peter V. Ueberroth

* JACKIE M. WARD Director November 15, 2001

Jackie M. Ward

* VIRGIL R. WILLIAMS Director November 15, 2001

Virgil R. Williams

*By: /s/ PAUL J. POLKING

Paul J. Polking

Attorney-in-Fact

II-8

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Amendment No. 1 to the Registration Statement to be signed on its behalf by the undersigned, thereunto authorized, in the City of Charlotte, North Carolina, on November 15, 2001.

BAC CAPITAL TRUST I

By: /s/ JAMES T. HOUGHTON

James T. Houghton
Regular Trustee

By: /s/ KAREN A. GOSNELL

Karen A. Gosnell
Regular Trustee

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Amendment No. 1 to the Registration Statement to be signed on its behalf by the undersigned, thereunto authorized, in the City of Charlotte, North Carolina, on November 15, 2001.

BAC CAPITAL TRUST II

By: /s/ JAMES T. HOUGHTON

James T. Houghton
Regular Trustee

By: /s/ KAREN A. GOSNELL

Karen A. Gosnell
Regular Trustee

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Amendment No. 1 to the Registration Statement to be signed on its behalf by the undersigned, thereunto authorized, in the City of Charlotte, North Carolina, on November 15, 2001.

BAC CAPITAL TRUST III

By: /s/ JAMES T. HOUGHTON

James T. Houghton
Regular Trustee

By: /s/ KAREN A. GOSNELL

Karen A. Gosnell
Regular Trustee

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Amendment No. 1 to the Registration Statement to be signed on its behalf by the undersigned, thereunto authorized, in the City of Charlotte, North Carolina, on November 15, 2001.

BAC CAPITAL TRUST IV

By: /s/ JAMES T. HOUGHTON

James T. Houghton
Regular Trustee

By: /s/ KAREN A. GOSNELL

Karen A. Gosnell
Regular Trustee

II-9

EXHIBIT INDEX

<TABLE>
<CAPTION>

Exhibit Number	Description
<C>	<S>
1.1	Form of Underwriting Agreement for offering of Capital Securities
4.1	Certificate of Trust of BAC Capital Trust I*
4.2	Certificate of Trust of BAC Capital Trust II*
4.3	Certificate of Trust of BAC Capital Trust III*
4.4	Certificate of Trust of BAC Capital Trust IV*
4.5	Declaration of Trust of BAC Capital Trust I*
4.6	Declaration of Trust of BAC Capital Trust II*
4.7	Declaration of Trust of BAC Capital Trust III*
4.8	Declaration of Trust of BAC Capital Trust IV*

- 4.9 Form of Amended and Restated Declaration of Trust for each BAC Capital Trust
- 4.10 Restated Indenture between Bank of America Corporation and The Bank of New York, as Trustee
- 4.11 Form of Supplemental Indenture to be used in connection with the issuance of Junior Subordinated Notes*
- 4.12 Form of Preferred Security (included in 4.9 above)
- 4.13 Form of Junior Subordinated Note (included in 4.11 above)*
- 4.14 Form of Guarantee with respect to Capital Securities issued by the respective BAC Capital Trusts
- 5.1 Opinion of Smith Helms Mulliss & Moore, L.L.P.*
- 5.2 Opinion of Richards, Layton & Finger, P.A.*
- 8.1 Opinion of Stroock & Stroock & Lavan LLP*
- 12.1 Calculation of Ratios of Earnings to Fixed Charges, incorporated herein by reference to Exhibit 12(a) to the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2001 (File No. 1-6523)
- 12.2 Calculation of Ratios of Earnings to Fixed Charges and Preferred Stock Dividends, incorporated herein by reference to Exhibit 12(b) to the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2001 (File No. 1-6523)
- 23.1 Consent of PricewaterhouseCoopers LLP
- 23.2 Consent of Smith Helms Mulliss & Moore, L.L.P. (included in Exhibit 5.1)*
- 23.3 Consent of Richards, Layton & Finger, P.A. (included in Exhibit 5.2)*
- 23.4 Consent of Stroock & Stroock & Lavan LLP (included in Exhibit 8.1)*
- 24.1 Power of Attorney*
- 24.2 Certified Resolutions*
- 25.1 Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of The Bank of New York, as Indenture Trustee under the Restated Indenture*
- 25.2 Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of The Bank of New York, as Property Trustee under the Amended and Restated Declaration of Trust of BAC Capital Trust I*
- 25.3 Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of The Bank of New York, as Property Trustee under the Amended and Restated Declaration of Trust of BAC Capital Trust II*
- 25.4 Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of The Bank of New York, as Property Trustee under the Amended and Restated Declaration of Trust of BAC Capital Trust III*
- 25.5 Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of The Bank of New York, as Property Trustee under the Amended and Restated Declaration of Trust of BAC Capital Trust IV*
- 25.6 Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of The Bank of New York, as Guarantee Trustee under the Capital Securities Guarantee of Bank of America Corporation for the benefit of the holders of Capital Securities of BAC Capital Trust I*

</TABLE>

<TABLE>
<CAPTION>

Exhibit
Number

Description

<C> <S>

- | Exhibit
Number | Description |
|-------------------|--|
| 25.7 | Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of The Bank of New York, as Guarantee Trustee under the Capital Securities Guarantee of Bank of America Corporation for the benefit of the holders of Capital Securities of BAC Capital Trust II* |
| 25.8 | Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of The Bank of New York, as Guarantee Trustee under the Capital Securities Guarantee of Bank of America Corporation for the benefit of the holders of Capital Securities of BAC Capital Trust III* |
| 25.9 | Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of The Bank of New York, as Guarantee Trustee under the Capital Securities Guarantee of Bank of America Corporation for the benefit of the holders of Capital Securities of BAC Capital Trust IV* |
| 99.1 | Provisions of Delaware General Corporation Law relating to indemnification of directors and officers, incorporated herein by reference to Exhibit 99.1 of the Registrant's Registration Statement on Form S-3 (Registration No. 333-83503) |

</TABLE>

* Previously filed with this Registration Statement.

_____ Capital Securities

BAC CAPITAL TRUST ___
(a Delaware Trust)

_____ % Capital Securities
(Liquidation Amount of \$__ per Capital Security)

UNDERWRITING AGREEMENT

_____, 2001

Banc of America Securities LLC
as Representatives of the several Underwriters
c/o Banc of America Securities LLC
100 North Tryon Street, 7/th/ Floor
Charlotte, North Carolina 28255
Attention:

Ladies and Gentlemen:

BAC Capital Trust ___ (the "Trust"), a statutory business trust organized under the Business Trust Act (the "Delaware Act") of the State of Delaware (Chapter 38, Title 12, of the Delaware Code, 12 Del. C. (S)3801 et seq.), and Bank of America Corporation, a Delaware corporation (the "Company" and, together with the Trust, the "Offerors"), confirm their agreement (the "Agreement") with Banc of America Securities LLC and _____ and each of the several Underwriters named in Schedule A hereto (collectively, the "Underwriters," which term also shall include any underwriter substituted as hereinafter provided in Section 9 hereof), for whom Banc of America Securities LLC and _____ are acting as representatives (in such capacity, the "Representatives", however, if the Underwriters named in Schedule A hereto include only Banc of America Securities LLC and _____, then all references in this Agreement to the Representatives shall be deemed references to the Underwriters), with respect to the sale by the Trust and the purchase by the Underwriters, acting severally and not jointly, of the respective numbers of _____ % Capital Securities (liquidation amount of \$__ per Capital Security) of the Trust (the "Capital Securities") set forth in Schedule A attached hereto. The Capital Securities will be guaranteed on a subordinated basis by the Company, to the extent set forth in the Prospectus (as defined herein), with respect to distributions and payments upon liquidation, redemption and otherwise (the "Capital Securities Guarantee") pursuant to the Capital Securities Guarantee Agreement, to be dated as of _____, 2001 (the "Capital Securities Guarantee Agreement"), between the Company and The Bank of New York, as trustee (the "Guarantee Trustee"), and will be entitled to the benefits of certain backup undertakings described in the Prospectus (as defined herein) with respect to the Company's agreement pursuant to the [First] Supplemental Indenture (as defined herein) to pay all expenses relating to administration of the Trust (other than payment obligations with respect to the Capital

Securities). The Capital Securities and the related Capital Securities Guarantees are referred to herein as the "Securities."

The Offerors have filed with the Securities and Exchange Commission (the "Commission") a registration statement on Form S-3 (No. 333-70984) and a related prospectus for the registration under the Securities Act of 1933, as amended (the "1933 Act") of (i) the Capital Securities, (ii) the Capital Securities Guarantee, and (iii) the Junior Subordinated Notes (as defined below) to be issued and sold to the Trust by the Company, have filed such amendments thereto, if any, and such amended prospectuses as may have been required to the date hereof, and will file such additional amendments thereto and such amended prospectuses as may hereafter be required. Such registration statement (as amended) and the prospectus constituting a part thereof (including, in each case, all documents incorporated or deemed to be incorporated by reference therein pursuant to Item 12 of Form S-3 under the 1933 Act and the information, if any, deemed to be part thereof pursuant to Rule 430A(b) of the rules and regulations of the Commission under the 1933 Act (the "1933 Act Regulations")), as from time to time amended or supplemented pursuant to the 1933 Act, the Securities Exchange Act of 1934, as amended (the "1934 Act"), or otherwise, are hereinafter referred to as the "Registration Statement" and the "Prospectus," respectively, except that, if any revised prospectus shall be provided to the Underwriters by the Offerors for use in connection with the offering of the Capital Securities which differs from the Prospectus on file at the Commission at the time the Registration Statement became effective (whether or not such revised prospectus is required to be filed by the Offerors pursuant to Rule 424(b) of the 1933 Act Regulations), the term "Prospectus" shall refer to such revised prospectus from and after the time it is first provided to the Underwriters for such use. All references in this Agreement to financial statements and schedules and other information that is "contained," "included" or "stated" in the Registration Statement or the Prospectus (and all other

references of like import) shall be deemed to mean and include all such financial statements and schedules and other information that are or are deemed to be incorporated by reference in the Registration Statement or the Prospectus, as the case may be; and all references in this Agreement to amendments or supplements to the Registration Statement or the Prospectus shall be deemed to mean and include the filing of any document under the 1934 Act that is or is deemed to be incorporated by reference in the Registration Statement or the Prospectus, as the case may be.

The Offerors understand that the Underwriters propose to make a public offering of the Securities as soon as the Representatives deem advisable after this Agreement has been executed and delivered and the Declaration (as defined herein), the Indenture (as defined herein) and the Capital Securities Guarantee have been qualified under the Trust Indenture Act of 1939, as amended (the "1939 Act"). The entire proceeds to the Trust from the sale of the Capital Securities will be combined with the entire proceeds from the sale by the Trust to the Company of its common securities (the "Common Securities"), as guaranteed on a subordinated basis by the Company, to the extent set forth in the Prospectus, with respect to distributions and payments upon liquidation and redemption thereof (the "Common Securities Guarantee" and, together with the Capital Securities Guarantee, the "Guarantees") pursuant to the Common Securities Guarantee Agreement, to be dated as of _____, 2001 (the "Common Securities Guarantee Agreement" and, together with the Capital Securities Guarantee Agreement, the "Guarantee

2

Agreements") and will be used by the Trust to purchase \$_____ aggregate principal amount of ___% Junior Subordinated Notes due _____ (the "Junior Subordinated Notes") issued by the Company, under the Indenture (as defined herein). The Capital Securities and the Common Securities will be issued pursuant to the Amended and Restated Declaration of Trust of the Trust, dated as of _____, 2001 (the "Declaration"), among the Company, as Sponsor, James T. Houghton and Karen A. Gosnell, as trustees (the "Regular Trustees"), The Bank of New York (Delaware), a Delaware banking corporation (as "Delaware Trustee"), and The Bank of New York, a New York banking corporation, as property trustee (the "Property Trustee" and, together with the Delaware Trustee and Regular Trustees, the "Trustees"), and the holders from time to time of undivided beneficial interests in the assets of the Trust. The Junior Subordinated Notes will be issued pursuant to a restated indenture, dated as of November 1, 2001 (the "Base Indenture"), between the Company and The Bank of New York, as trustee (the "Debt Trustee"), and a [first] supplement to the Base Indenture, to be dated as of _____, 2001 (the "[First] Supplemental Indenture," and together with the Base Indenture, the "Indenture"), between the Company and the Debt Trustee.

SECTION 1. REPRESENTATIONS AND WARRANTIES. (a) The Offerors jointly and severally represent and warrant to each Underwriter as of the date hereof and as of the Closing Time (as hereinafter defined) as follows:

(i) At the time the Registration Statement became effective and as of the date hereof, the Registration Statement complied in all material respects with the requirements of the 1933 Act and the 1933 Act Regulations and the 1939 Act and the rules and regulations of the Commission under the 1939 Act (the "1939 Act Regulations"), and did not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The Prospectus, dated the date hereof (unless the term "Prospectus" refers to a prospectus that has been provided to the Underwriters by the Trust for use in connection with the offering of the Securities and that differs from the Prospectus on file at the Commission at the time the Registration Statement became effective, in which case, at the time it is first provided to the Underwriters for such use) and at Closing Time does not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, the Offerors make no representations or warranties as to (A) that part of the Registration Statement which constitutes the Statements of Eligibility and Qualification (Forms T-1) under the 1939 Act of the Debt Trustee, the Property Trustee or the Guarantee Trustee or (B) the information contained in or omitted from the Registration Statement or the Prospectus or any amendment thereof or supplement thereto in reliance upon and in conformity with information furnished in writing to the Offerors by or on behalf of any Underwriter through the Representatives specifically for inclusion in the Registration Statement and the Prospectus and actually included therein.

(ii) The documents incorporated or deemed to be incorporated by reference in the Registration Statement or Prospectus, at the time they were or hereafter are filed with

3

the Commission complied and will comply in all material respects with the requirements of the 1934 Act and the rules and regulations of the Commission under the 1934 Act (the "1934 Act Regulations").

(iii) To the best knowledge of the Offerors, PricewaterhouseCoopers LLP, the accountants who certified the financial statements and supporting schedules included in or incorporated by reference into the Registration Statement, are independent public accountants as required by the 1933 Act and the 1933 Act Regulations.

(iv) The Trust has been duly created and is validly existing and in good standing as a business trust under the Delaware Act with the power and authority to own property and to conduct its business as described in the Registration Statement and Prospectus and to enter into and perform its obligations under this Agreement, the Capital Securities, the Common Securities and the Declaration; the Trust is not a party to or otherwise bound by any agreement other than those described in the Prospectus; the Trust is and will be classified for United States federal income tax purposes as a grantor trust and not as an association taxable as a corporation; and the Trust is and will be treated as a consolidated subsidiary of the Company pursuant to generally accepted accounting principles.

(v) The Common Securities have been duly authorized by the Trust pursuant to the Declaration and, when issued and delivered by the Trust to the Company against payment therefor as described in the Registration Statement and Prospectus, will be validly issued and, subject to the terms of the Declaration, fully paid and non-assessable undivided beneficial interests in the assets of the Trust and will conform to all statements relating thereto contained in the Prospectus; the issuance of the Common Securities is not subject to preemptive or other similar rights.

(vi) This Agreement has been duly authorized, executed and delivered by each of the Offerors.

(vii) The Declaration has been duly authorized by the Company, as Sponsor, and when validly executed and delivered by the Company and the Regular Trustees, and assuming due authorization, execution and delivery of the Declaration by the Property Trustee and the Delaware Trustee, the Declaration will be a valid and binding obligation of the Company, the Trust and the Regular Trustees, enforceable against the Company and the Regular Trustees in accordance with its terms, subject, as to enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance or other similar laws affecting the rights of creditors now or hereafter in effect, and to equitable principles that may limit the right to specific enforcement of remedies, and further subject to 12 U.S.C. 1818(b)(6)(D) (or any successor statute) and any bank regulatory powers now or hereafter in effect and to the application of principles of public policy (collectively, the "Permitted Exceptions") and will conform to all statements relating thereto in the Prospectus; and the Declaration has been duly qualified under the 1939 Act.

4

(viii) Each of the Guarantee Agreements has been duly authorized by the Company and, when validly executed and delivered by the Company, and, in the case of the Capital Securities Guarantee Agreement, assuming due authorization, execution and delivery of the Capital Securities Guarantee by the Guarantee Trustee, will constitute a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms except to the extent that enforcement thereof may be limited by the Permitted Exceptions, and each of the Guarantees and the Guarantee Agreements will conform to all statements relating thereto contained in the Prospectus; and the trust pursuant to the Capital Securities Guarantee Agreement has been duly qualified under the 1939 Act.

(ix) The Capital Securities have been duly authorized by the Trust pursuant to the Declaration and, when issued and delivered pursuant to this Agreement against payment of the consideration therefor set forth in Schedule B hereto, will be validly issued and, subject to the terms of the Declaration, fully paid and non-assessable undivided beneficial interests in the Trust, will be entitled to the benefits of the Declaration and will conform to all statements relating thereto contained in the Prospectus; the issuance of the Capital Securities is not subject to preemptive or other similar rights; and, subject to the terms of the Declaration, holders of Capital Securities will be entitled to the same limitation of personal liability under Delaware law as extended to stockholders of private corporations for profit.

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

(xi) None of the Offerors is, and upon the issuance and sale of the Capital Securities as herein contemplated and the application of the net proceeds therefrom as described in the Prospectus none will be, an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended (the "1940 Act").

(xii) No authorization, approval, consent or order of any court or governmental authority or agency is necessary in connection with the issuance and sale of the Common Securities or the offering of the Capital Securities, the Junior Subordinated Notes or the Capital Securities Guarantee hereunder, except such as may be required under the 1933 Act or the 1933 Act Regulations or state securities laws and the qualification of the Declaration, the Capital Securities Guarantee Agreement and the Indenture under the 1939 Act.

(b) The Company represents and warrants to each Underwriter as of the date hereof and as of the Closing Time as follows:

(i) The Company meets the requirements for use of Form S-3 under the 1933 Act and has filed with the Commission the Registration Statement, which has been declared effective. The Registration Statement meets the requirements of Rule 415(a)(1) under the 1933 Act and complies in all other material respects with said Rule.

5

(ii) The Company has complied and will comply with all the provisions of Florida H.B. 1771, codified as Section 517.075 of the Florida Statutes, 1987, as amended, and all regulations promulgated thereunder relating to issuers doing business in Cuba; provided, however, that in the event that such Section 517.075 shall be repealed, or amended such that issuers shall no longer be required to disclose in prospectuses information regarding business activities in Cuba or that a broker, dealer or agent shall no longer be required to obtain a statement from issuers regarding such compliance, then this representation and agreement shall be of no further force and effect.

(iii) Since the respective dates as of which information is given in the Registration Statement and the Prospectus, except as otherwise stated therein, there has been no material adverse change in the condition, financial or otherwise, or in the earnings or business affairs of the Trust or the Company and its subsidiaries, considered as one enterprise, whether or not arising in the ordinary course of business.

(iv) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware with corporate power to own, lease and operate its properties and to conduct its business as described in the Prospectus, to enter into and perform its obligations under this Agreement, the Declaration, as Sponsor, the Indenture and each of the Guarantee Agreements and to purchase, own, and hold the Common Securities issued by the Trust; the Company is duly registered as a bank holding company under the Bank Holding Company Act of 1956, as amended; and the Company is duly qualified as a foreign corporation to transact business and is in good standing in each jurisdiction in which the character or location of its properties or the nature or the conduct of its business requires such qualification, except for any failures to be so qualified or in good standing which, taken as a whole, are not material to the Company and its subsidiaries, considered as one enterprise.

(v) Bank of America, N.A. (or the successor(s) to such entity) (the "Principal Subsidiary Bank") is a national banking association formed under the laws of the United States and authorized thereunder to transact business; all of the issued and outstanding capital stock of the Principal Subsidiary Bank has been duly authorized and validly issued, is fully paid and non-assessable; and the capital stock of the Principal Subsidiary Bank is owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance, claim or equity.

(vi) The Indenture has been duly authorized by the Company and, when validly executed and delivered by the Company, will constitute a valid and binding agreement of the Company, enforceable against the

Company in accordance with its terms except to the extent that enforcement thereof may be limited by the Permitted Exceptions; the Indenture will conform to all statements relating thereto contained in the Prospectus; and the Indenture has been duly qualified under the 1939 Act.

(vii) The Junior Subordinated Notes have been duly authorized by the Company and, when duly executed by the Company and authenticated in the manner provided for in the Indenture and delivered against payment therefor as described in the

6

Prospectus, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms except to the extent that enforcement thereof may be limited by the Permitted Exceptions, and will be in the form contemplated by, and, subject to the Permitted Exceptions, entitled to the benefits of, the Indenture and will conform to all statements relating thereto in the Prospectus.

(viii) The Company's obligations under the Guarantee Agreements are subordinate and junior in right of payment to all liabilities of the Company and are pari passu with the most senior preferred stock issued by the Company.

(ix) The Junior Subordinated Notes are subordinated and junior in right of payment to all "Senior Obligations" (as defined in the Indenture) of the Company.

(x) Each holder of securities of the Company having rights to the registration of such securities under the Registration Statement has waived such rights or such rights have expired by reason of lapse of time following notification of the Company's intention to file the Registration Statement.

(xi) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated herein and compliance by the Company with its obligations hereunder will not conflict with or constitute a breach of, or default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or the Principal Subsidiary Bank pursuant to, any contract, indenture, mortgage, loan agreement, note, lease or other instrument to which the Company or the Principal Subsidiary Bank is a party or by which it or any of them may be bound, or to which any of the property or assets of the Company or the Principal Subsidiary Bank is subject (except for conflicts, breaches and defaults which would not, individually or in the aggregate, be materially adverse to the Company and its subsidiaries taken as a whole or materially adverse to the transactions contemplated by this Agreement), nor will such action result in any material violation of the provisions of the articles of incorporation or by-laws of the Company, or any applicable law, administrative regulation or administrative or court decree.

(c) Each certificate signed by any officer of the Company and delivered to the Representatives or counsel for the Underwriters shall be deemed to be a representation and warranty by the Company to each Underwriter as to the matters covered thereby.

(d) The Trust represents and warrants to each Underwriter as of the date hereof and as of the Closing Time (as hereinafter defined) as follows:

(i) Since the respective dates as of which information is given in the Registration Statement and the Prospectus, except as otherwise stated therein, (A) there has been no material adverse change in the condition, financial or otherwise, or in the earnings or business affairs of the Trust, whether or not arising in the ordinary course of business, and (B) there have been no transactions entered into by the Trust, other than in the ordinary course of business, which are material with respect to the Trust.

7

(ii) Except as disclosed in the Prospectus, there is no action, suit or proceeding before or by any government, governmental instrumentality or court, domestic or foreign, now pending or, to the best knowledge of the Trust, threatened, against or affecting the Trust that is required to be disclosed in the Prospectus, other than actions, suits or proceedings which are not reasonably expected, individually or in the aggregate, to have a material adverse effect on the condition, financial or otherwise, or in the earnings or business affairs of the Trust, whether or not arising in the

ordinary course of business; and there are no transactions, contracts or documents of the Trust that are required to be filed as exhibits to the Registration Statement by the 1933 Act or by the 1933 Act Regulations that have not been so filed.

(iii) The Trust possesses adequate certificates, authorities or permits issued by the appropriate state, federal or foreign regulatory agencies or bodies to conduct the business now operated by it, and the Trust has not received any notice of proceedings relating to the revocation or modification of any such certificate, authority or permit which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding would materially and adversely affect the condition, financial or otherwise, or in the earnings or business affairs of the Trust.

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

(e) Each certificate signed by any Trustee of the Trust and delivered to the Underwriters or counsel for the Underwriters shall be deemed to be a representation and warranty by the Trust to each Underwriter as to the matters covered thereby.

SECTION 2. SALE AND DELIVERY TO UNDERWRITERS; CLOSING.

(a) On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Trust agrees to sell to each Underwriter, severally

8

and not jointly, and each Underwriter, severally and not jointly, agrees to purchase from the Trust, at the price per security set forth in the Schedule B, the number of Capital Securities set forth in Schedule A opposite the name of such Underwriter (except as otherwise provided in Schedule B), plus any additional number of Capital Securities that such Underwriter may become obligated to purchase pursuant to the provisions of Section 9 hereof.

The purchase price per security to be paid by the several Underwriters for the Capital Securities shall be an amount equal to the initial public offering price. The initial public offering price per Capital Security shall be a fixed price to be determined by agreement between the Underwriter and the Offerors. The initial public offering price and the purchase price are set forth in Schedule B. As compensation to the Underwriters for their commitments hereunder and in view of the fact that the proceeds of the sale of the Capital Securities will be used to purchase the Junior Subordinated Notes of the Company, the Company hereby agrees to pay at Closing Time directly to the Underwriters, a commission per Capital Security determined by agreement between the Representatives and the Company for the Capital Securities to be delivered by the Trust hereunder at Closing Time. The commission is set forth in Schedule B.

(b) Payment of the purchase price for, and delivery of certificates for, the Capital Securities shall be made at the office of Stroock & Stroock & Lavan LLP, or at such other place as shall be agreed upon by the Representatives, the Company and the Trust, at 10:00 A.M. New York time on the third business day, (unless postponed in accordance with the provisions of Section 8) after the date hereof, or such other time not later than ten business days after such date as shall be agreed upon by the Representatives, the Trust and the Company (such time and date of payment and delivery being herein called "Closing Time"). Payment shall be made to the Trust by wire transfer or certified or official bank check or similar same day funds payable to the order of the Trust to an account designated by the Trust, against delivery to the Representatives for the respective accounts of the Underwriters of certificates for the Capital Securities to be purchased by them. Unless otherwise agreed, certificates for the Capital Securities shall be in the form set forth in the Declaration, and such certificates shall be deposited with a custodian (the "Custodian") for The

Depository Trust Company ("DTC") and registered in the name of Cede & Co., as nominee for DTC.

At the Closing Time, the Company will pay, or cause to be paid, the commission payable at such time to the Underwriters under this Section 2 hereof by wire transfer or certified or official bank check or checks payable to the Representatives in same day funds.

SECTION 3. COVENANTS OF THE OFFERORS. Each of the Offerors jointly and severally covenants with each Underwriter as follows:

(a) Prior to the termination of the offering of the Capital Securities, the Offerors will notify the Representatives promptly, and confirm the notice in writing, (i) of the effectiveness of the Registration Statement and any amendment thereto (including any post-effective amendment), (ii) of the filing of any supplement to the Prospectus or any document to be filed pursuant to the 1934 Act which will be incorporated by reference in the Prospectus, (iii) of the receipt of any comments from the Commission with respect to the Registration Statement or Prospectus (other than with respect to a document filed with the Commission pursuant to the

9

1934 Act which will be incorporated by reference in the Registration Statement and Prospectus), (iv) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Prospectus or for additional information relating thereto (other than such a request with respect to a document filed with the Commission pursuant to the 1934 Act which will be incorporated by reference in the Registration Statement and Prospectus), and (v) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceedings for that purpose. The Offerors will make every reasonable effort to prevent the issuance of any stop order and, if any stop order is issued, to obtain the lifting thereof at the earliest possible moment.

(b) Prior to the termination of the offering of the Capital Securities, the Offerors (1) will give the Representatives notice of their intention to file or prepare (i) any amendment to the Registration Statement (including any post-effective amendment) or (ii) any amendment or supplement to the Prospectus (including any revised prospectus which the Offerors propose for use by the Underwriters in connection with the offering of the Capital Securities which differs from the prospectus on file at the Commission at the time the Registration Statement became effective, whether or not such revised prospectus is required to be filed pursuant to Rule 424(b) of the 1933 Act Regulations), will furnish the Representatives with copies of any such amendment, supplement or other document within a reasonable amount of time prior to such proposed filing or use, as the case may be, and will not file any such amendment, supplement or other document or use any such prospectus to which the Underwriters or counsel for the Underwriters shall reasonably object and (2) will furnish the Representatives with copies of any document that will be incorporated by reference in the Prospectus whether pursuant to the 1933 Act, the 1934 Act or otherwise. Subject to the foregoing, the Offerors will file the final Prospectus pursuant to Rule 424(b) and Rule 430A under the 1933 Act not later than the Commission's close of business on the second business day following the execution and delivery of this Agreement.

(c) The Offerors will deliver to the Representatives as many signed copies of the Registration Statement as originally filed and of each amendment thereto (including exhibits filed therewith or incorporated by reference therein and documents incorporated or deemed to be incorporated by reference therein) as the Representatives may reasonably request and will also deliver to the Representatives a conformed copy of the Registration Statement as originally filed and of each amendment thereto (without exhibits) for each of the Underwriters.

(d) The Offerors will furnish to each Underwriter, from time to time during the period when the Prospectus is required to be delivered under the 1933 Act, such number of copies of the Prospectus (as amended or supplemented) as such Underwriter may reasonably request for the purposes contemplated by the 1933 Act or the 1933 Act Regulations.

(e) If at any time when the Prospectus is required by the 1933 Act to be delivered in connection with sales of the Capital Securities, except with respect to any such delivery requirement imposed upon an affiliate of the Offerors in connection with any secondary market sales, any event shall occur as a result of which the Prospectus as then amended or supplemented will include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein in light of the circumstances under which they were made not

10

misleading or if it shall be necessary to amend or supplement the Prospectus in

order to comply with the requirements of the 1933 Act or the 1933 Act Regulations, the Offerors will, subject to paragraph (b) above, promptly prepare and file with the Commission such amendment or supplement which will correct such statement or omission or an amendment which will effect such compliance, give immediate notice, and confirm in writing, to the Underwriters to cease the solicitation of offers to purchase the Capital Securities, and furnish to the Underwriters a reasonable number of copies of such amendment or supplement.

(f) The Offerors will endeavor, in cooperation with the Underwriters, to qualify the Capital Securities (and the Capital Securities Guarantee) and the Junior Subordinated Notes for offering and sale under the applicable securities laws of such states and the other jurisdictions of the United States as the Underwriters may designate; provided, however, that none of the Offerors shall be obligated to qualify as a foreign corporation in any jurisdiction in which it is not so qualified.

(g) The Company will make generally available to its security holders and to the Underwriters as soon as practicable, but not later than 90 days after the close of the period covered thereby, an earnings statement (which need not be audited) of the Company and its subsidiaries, covering an applicable period beginning not later than the first day of the Company's fiscal quarter next following the "Effective Date" (as defined in Rule 158(c) under the 1933 Act) of the Registration Statement, which will satisfy the provisions of Section 11(a) of the 1933 Act.

(h) Although the Company and the Trust do not currently intend to apply to list the Capital Securities on any national or international exchange, if the Capital Securities are exchanged for Junior Subordinated Notes while the Capital Securities are listed on any national or international exchange, the Company will use its best efforts to effect the listing of the Junior Subordinated Notes on any exchange on which the Capital Securities are then listed.

(i) The Company, during the period when the Prospectus is required to be delivered under the 1933 Act, will file promptly all documents required to be filed with the Commission pursuant to Sections 13(a), 13(c), 14 or 15(d) of the 1934 Act.

SECTION 4. PAYMENT OF EXPENSES. The Company will pay all expenses incident to the performance of each Offerors' obligations under this Agreement, and will pay: (i) the printing and filing of the Registration Statement as originally filed and of each amendment thereto, (ii) the preparation, issuance and delivery of the certificates for the Capital Securities, (iii) the fees and disbursements of the Company's and the Trust's counsel and accountants, (iv) the qualification of the Capital Securities, the Capital Securities Guarantee and the Junior Subordinated Notes under securities laws in accordance with the provisions of Section 3(f) hereof, including filing fees and the fees and disbursements of Stroock & Stroock & Lavan LLP, counsel for the Underwriters, in connection therewith and in connection with the preparation of any blue sky survey, (v) the printing and delivery to the Underwriters of copies of the Registration Statement as originally filed and of each amendment thereto, of each preliminary prospectus, and of the Prospectus and any amendments or supplements thereto, (vi) the printing and delivery to the Underwriters of copies of any blue sky survey, (vii) the fee of the National

11

Association of Securities Dealers, Inc. (the "NASD"), if applicable, (viii) the fees and expenses of the Debt Trustee, including the fees and disbursements of counsel for the Debt Trustee in connection with the Indenture and the Junior Subordinated Notes, (ix) the fees and expenses of the Property Trustee, the Delaware Trustee and the Guarantee Trustee, including the fees and disbursements of counsel for the Delaware Trustee in connection with the Declaration and the Certificate of Trust; (x) any fees payable in connection with the rating of the Capital Securities and Junior Subordinated Notes; (xi) the cost and charges of any transfer agent or registrar; and (xii) the cost of qualifying the Capital Securities with DTC.

If this Agreement is terminated by the Representatives in accordance with the provisions of Section 5 or Section 9 hereof, the Company shall reimburse the Underwriters for all of their reasonable out-of-pocket expenses, including the reasonable fees and disbursements of Stroock & Stroock & Lavan LLP, counsel for the Underwriters.

SECTION 5. CONDITIONS OF UNDERWRITERS' OBLIGATIONS. The obligations of the Underwriters hereunder are subject to the accuracy of the representations and warranties of the Offerors herein contained or in certificates of officers of the Company or trustees of the Trust, to the performance by the Offerors of their obligations hereunder, and to the following further conditions:

(a) The Registration Statement shall have become effective prior to the date hereof or at such later time and date as may be approved by the Representatives and at Closing Time no stop order suspending the effectiveness of the Registration Statement shall have been issued under the 1933 Act or proceedings therefor initiated or threatened by the Commission. The Prospectus

shall have been filed with the Commission pursuant to Rule 424(b) within the applicable time period prescribed for such filing by the 1933 Regulations and in accordance with Section 3(b), and prior to Closing Time, the Offerors shall have provided evidence satisfactory to the Representatives of such timely filing.

(b) At Closing Time the Representatives shall have received:

(1) The favorable opinion of Smith Helms Mulliss & Moore, L.L.P., counsel for the Company, dated as of the Closing Time, to the effect of paragraphs (i) and (v) through (xvii) below, and the favorable opinion of Paul J. Polking, General Counsel to the Company, dated as of the Closing Time, to the effect of paragraphs (ii), (iii) and (iv) below:

(i) The Company is a duly organized and validly existing corporation in good standing under the laws of the State of Delaware, has the corporate power and authority to own its properties, conduct its business as described in the Prospectus and perform its obligations under this Agreement, and is duly registered as a bank holding company under the Bank Holding Company Act of 1956, as amended; the Principal Subsidiary Bank is a national banking association formed under the laws of the United States and authorized thereunder to transact business.

(ii) Each of the Company and the Principal Subsidiary Bank is qualified or licensed to do business as a foreign corporation in any jurisdiction in which such counsel

12

has knowledge that the Company or the Principal Subsidiary Bank, as the case may be, is required to be so qualified or licensed.

(iii) All the outstanding shares of capital stock of the Principal Subsidiary Bank have been duly and validly authorized and issued and are fully paid and (except as provided in 12 U.S.C. (S) 55, as amended) non-assessable, and, except as otherwise set forth in the Prospectus, all outstanding shares of common stock of the Principal Subsidiary Bank (except directors' qualifying shares) are owned, directly or indirectly, by the Company free and clear of any perfected security interest and, to the best knowledge of such counsel, any other security interests, claims, liens or encumbrances.

(iv) To the best knowledge of such counsel, there is no pending or threatened action, suit or proceeding before or by any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries, of a character required to be disclosed in the Registration Statement which is not adequately disclosed in the Prospectus, and there is no franchise, contract, or other document of a character required to be described in the Registration Statement or Prospectus, or to be filed as an exhibit, which is not described or filed as required.

(v) The Registration Statement has become effective under the 1933 Act; to the best knowledge of such counsel, no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been instituted or threatened; the Registration Statement, the Prospectus and each amendment thereof or supplement thereto (other than the financial statements and other financial and statistical information contained therein or incorporated by reference therein, as to which such counsel need express no opinion) comply as to form in all material respects with the applicable requirements of the 1933 Act and the 1933 Act Regulations and the 1934 Act and the 1934 Act Regulations.

(vi) This Agreement has been duly authorized, executed and delivered by the Company and constitutes a legal, valid and binding instrument enforceable against the Company in accordance with its terms (subject to the Permitted Exceptions, and except insofar as the enforceability of the indemnity and contribution provisions contained in this Agreement may be limited by federal and state securities laws).

(vii) No authorization, approval, consent or order of, or filing with, any court or governmental authority or agency is required on behalf of the Company or the Trust in connection with the offering, issuance or sale of the Capital Securities, the Capital Securities Guarantee and the Junior Subordinated Notes by the Offerors, except (A) such as may be required under the 1933 Act and the 1933 Act Regulations and such as may be required under the blue sky or insurance laws of any jurisdiction, and (B) the qualification of the Declaration, the Capital Securities Guarantee Agreement and the Indenture under the 1939 Act.

(viii) The Declaration has been duly authorized, executed and delivered by the Company and the Regular Trustees and has been duly qualified under the 1939 Act.

(ix) Each of the Guarantee Agreements has been duly authorized, executed and delivered by the Company; the Capital Securities Guarantee Agreement, assuming it is duly authorized, executed and delivered by the Guarantee Trustee, constitutes a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except to the extent that enforcement thereof may be limited by the Permitted Exceptions; and the Capital Securities Guarantee Agreement has been duly qualified under the 1939 Act. The Common Securities Guarantee Agreement constitutes a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except to the extent that enforcement thereof may be limited by the Permitted Exceptions.

(x) The Indenture has been duly authorized, executed and delivered by the Company and, assuming due authorization, execution, and delivery thereof by the Debt Trustee, is a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except to the extent that enforcement thereof may be limited by the Permitted Exceptions; the Indenture has been duly qualified under the 1939 Act; and the Indenture conforms in all material respects to the description thereof in the Prospectus, as supplemented or amended.

(xi) The Junior Subordinated Notes have been duly authorized and executed by the Company and, when authenticated by the Trustee in the manner provided in the Indenture and delivered against payment therefor, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except to the extent that enforcement thereof may be limited by the Permitted Exceptions; and the Junior Subordinated Notes conform in all material respects to the description thereof in the Prospectus, as supplemented or amended.

(xii) Neither the Company nor the Trust is, and upon the issuance and sale of the Securities as herein contemplated and the application of the net proceeds therefrom as described in the Prospectus neither will be, an "investment company" or a company "controlled" by an "investment company" within the meaning of the 1940 Act.

(xiii) The forms of the Common Securities and the Capital Securities and the Declaration conform in all material respects to the description thereof contained in the Prospectus.

(xiv) All of the issued and outstanding Common Securities of the Trust are directly owned by the Company free and clear of any security interest, mortgage, pledge, lien, encumbrance, claim or equitable right.

(xv) The Trust is not a party to or otherwise bound by any agreement other than those described in the Prospectus.

(xvi) This Agreement has been duly executed and delivered by the Trust.

(xvii) Neither the issuance and sale of the Notes, the consummation of any other of the transactions contemplated by this Agreement nor the fulfillment of the terms thereof will conflict with, result in a breach of, or constitute a default under any provision of applicable law or the Certificate of Incorporation or the Bylaws of the Company, each as amended to date, or the terms of any material indenture or other agreement or instrument known to such counsel and to which the Company or the Principal Subsidiary Bank is a party or bound, or any order or regulation known to such counsel to be applicable to the Company or the Principal Subsidiary Bank of any court, regulatory body, administrative agency, governmental body or arbitrator having jurisdiction over the Company or the Principal Subsidiary Bank.

In rendering such opinions, such counsels may rely (A) as to matters involving the application of laws of any jurisdiction other than the State of North Carolina, the State of Delaware, or the United States, to the extent deemed proper and specified in such opinion, upon the opinion of other counsel of good standing believed to be reliable and who are satisfactory to counsel for the Underwriters; and (B) as to matters of fact, to the extent deemed proper, on the representations and warranties of the Offerors contained herein or in the Declaration, the Indenture, the Guarantee Agreements, that certain subscription agreement, of even date herewith, between the Company and the Trust covering the Common Securities and that certain note purchase agreement, of even date herewith, between the Company and the Trust, or on certificates of responsible

officers of the Company and its subsidiaries and public officials.

(2) The favorable opinion of Richards, Layton & Finger P.A., Special Delaware counsel to the Offerors, in form and substance satisfactory to counsel for the Underwriters, to the effect that:

(i) The Trust has been duly created and is validly existing in good standing as a business trust under the Delaware Act; all filings required under the laws of the State of Delaware with respect to the formation and valid existence of the Trust as a business trust have been made; the Trust has all necessary power and authority to own property and to conduct its business as described in the Registration Statement and the Prospectus and to enter into and perform its obligations under this Agreement, the Capital Securities and the Common Securities.

(ii) Assuming due authorization, execution and delivery by the Company and the Trustees, the Declaration is a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as enforcement thereof may be limited by the Permitted Exceptions.

(iii) The Common Securities have been duly authorized by the Declaration and are validly issued and represent undivided beneficial interests in the assets of the Trust.

(iv) The Capital Securities have been duly authorized by the Declaration and are validly issued and, subject to the terms of the Declaration, when delivered to and paid for by the Underwriters pursuant to this Agreement, will be validly issued, fully paid and non-assessable beneficial interests in the assets of the Trust; the holders of the Capital

15

Securities will, subject to the terms of the Declaration, be entitled to the same limitation of personal liability under Delaware law as is extended to stockholders of private corporations for profit; and the issuance of the Capital Securities is not subject to preemptive or other similar rights.

(v) This Agreement has been duly authorized by the Trust.

(vi) The issuance and sale by the Trust of the Capital Securities and the Common Securities, the execution, delivery and performance by the Trust of this Agreement, the consummation by the Trust of the transactions contemplated hereby and the compliance by the Trust with its obligations hereunder will not violate (A) any of the provisions of the Certificate of Trust or the Declaration or (B) any applicable Delaware law or administrative regulation.

(3) The favorable opinion of Richards, Layton & Finger P.A., Special Delaware counsel to The Bank of New York (Delaware), in form and substance satisfactory to counsel for the Underwriters, to the effect that:

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

(ii) The execution, delivery and performance by the Delaware Trustee of the Declaration has been duly authorized by all necessary corporate action on the part of the Delaware Trustee. The Declaration has been duly executed and delivered by the Delaware Trustee, and constitutes the legal, valid and binding obligation of the Delaware Trustee, enforceable against the Delaware Trustee in accordance with its terms, except as enforcement thereof may be limited by the Permitted Exceptions.

(iii) The execution, delivery and performance of the Declaration by the Delaware Trustee does not conflict with or constitute a breach of the articles of organization or bylaws of the Delaware Trustee.

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

(4) The favorable opinion, dated as of Closing Time, of Emmett, Marvin & Martin, LLP, counsel to The Bank of New York, as Debt Trustee under the Indenture, as Guarantee Trustee under the Capital Securities Guarantee Agreement, and as Property Trustee under the Declaration, in form and substance satisfactory to counsel for the Underwriters, to the effect that:

(i) The Bank of New York is a New York banking corporation with trust powers, duly organized, validly existing and in good standing under the laws of the State

16

of New York with all necessary power and authority to execute and deliver, and to carry out and perform its obligations under the terms of, the Declaration, the Indenture and the Capital Securities Guarantee Agreement.

(ii) The execution, delivery and performance by the Debt Trustee of the Indenture, the execution, delivery and performance by the Property Trustee of the Declaration, and the execution, delivery and performance by the Guarantee Trustee of the Capital Securities Guarantee Agreement have been duly authorized by all necessary corporate action on the part of the Debt Trustee, the Property Trustee and the Guarantee Trustee, respectively. The Indenture has been duly executed and delivered by the Debt Trustee, and constitutes the legal, valid and binding obligations of the Debt Trustee, enforceable against the Debt Trustee in accordance with its terms, except as enforcement thereof may be limited by the Permitted Exceptions. The Declaration has been duly executed and delivered by the Property Trustee, and constitutes the legal, valid and binding obligations of the Property Trustee, enforceable against the Property Trustee in accordance with its terms, except as enforcement thereof may be limited by the Permitted Exceptions. The Capital Securities Guarantee Agreement has been duly executed and delivered by the Guarantee Trustee, and constitutes the legal, valid and binding obligations of the Guarantee Trustee, enforceable against the Guarantee Trustee in accordance with its terms, except as enforcement thereof may be limited by the Permitted Exceptions.

(iii) The execution, delivery and performance of the Indenture by the Debt Trustee does not conflict with or constitute a breach of the Articles of Organization or Bylaws of the Debt Trustee. The execution, delivery and performance of the Declaration by the Property Trustee does not conflict with or constitute a breach of the Articles of Organization or Bylaws of the Property Trustee. The execution, delivery and performance of the Capital Securities Guarantee Agreement by the Guarantee Trustee does not conflict with or constitute a breach of the Articles of Organization or Bylaws of the Guarantee Trustee.

(iv) No consent, approval or authorization of, or registration with or notice to, any New York or federal banking authority is required for the execution, delivery or performance by the Debt Trustee of the Indenture. No consent, approval or authorization of, or registration with or notice to, any New York or federal banking authority is required for the execution, delivery or performance by the Property Trustee of the Declaration. No consent, approval or authorization of, or registration with or notice to, any New York or federal banking authority is required for the execution, delivery or performance by the Guarantee Trustee of the Capital Securities Guarantee Agreement.

(5) The favorable opinion, dated as of Closing Time, of Stroock & Stroock & Lavan LLP, counsel for the Underwriters, in form and substance satisfactory to the Underwriters with respect to the legal existence of the Company and the Trust, the Capital Securities, the Indenture, the Capital Securities Guarantee Agreement, this Agreement, the Registration Statement, the Prospectus and other related matters as the Representatives may require.

17

In giving its opinion, Stroock & Stroock & Lavan LLP may rely as to certain matters of Delaware law upon the opinion of Richards, Layton & Finger P.A., counsel for the Offerors, which shall be delivered in accordance with Section 5(b)(2) hereto.

(6) The favorable opinion of Stroock & Stroock & Lavan LLP, special tax counsel to the Company and the Trust, as to certain Federal tax matters set forth in the Prospectus under "United States Federal Income Taxation."

(7) In giving their opinions required by subsection (b) of this Section, but without opining in connection therewith, Mr. Polking and Smith Helms Mulliss & Moore, L.L.P. shall each additionally state, that although he or it has not independently verified, is not passing upon and assumes no responsibility for the accuracy, completeness, or fairness of the statements contained in the Registration Statement, that nothing has come to his or its attention that has caused him or it to believe that the Registration Statement (except for financial statements and schedules and other financial or statistical data included or incorporated by reference, therein, as to which

counsel need make no statement), at the time it became effective or as of the date of his or its respective opinion, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading or that the Prospectus (except for financial statements and schedules and other financial or statistical data included or incorporated by reference therein, as to which counsel need make no statement), as at the date hereof or at Closing Time, included an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(8) At Closing Time, there shall not have been, since the date hereof or since the respective dates as of which information is given in the Registration Statement and the Prospectus, any material adverse change in the condition, financial or otherwise, or in the earnings or business affairs of the Trust or the Company and its subsidiaries, considered as one enterprise, whether or not arising from transactions in the ordinary course of business, except as set forth or contemplated in the Prospectus, as amended or supplemented, and the Representatives shall have received a certificate of any Senior Vice President or Treasurer or any other authorized officer of the Company and a certificate of a Regular Trustee of the Trust, and dated as of Closing Time, to the effect that (i) there has been no such material adverse change, (ii) the representations and warranties in Section 1 hereof are true and correct with the same force and effect as though expressly made at and as of Closing Time, (iii) the Trust or the Company, as the case may be, has complied with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to Closing Time, (iv) no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been initiated or threatened by the Commission, and (v) no litigation or proceeding shall be threatened or pending to restrain or enjoin the issuance or delivery of the Capital Securities, or which in any way affects the validity of the Capital Securities.

(9) At the Closing Time, PricewaterhouseCoopers LLP shall have furnished to the Representatives a letter or letters (which may refer to letters previously delivered to the Representatives), dated as of the Closing Time, in form and substance satisfactory to the

18

Representatives, confirming that the response, if any, to Item 10 of the Registration Statement is correct insofar as it relates to them and stating in effect that:

(i) They are independent accountants within the meaning of the 1933 Act and the 1933 Act Regulations.

(ii) In their opinion, the consolidated financial statements of the Company and its subsidiaries audited by them and included or incorporated by reference in the Registration Statement and Prospectus comply as to form in all material respects with the applicable accounting requirements of the 1933 Act and the 1933 Act Regulations with respect to registration statements on Form S-3 and the 1934 Act and the 1934 Act Regulations.

(iii) On the basis of procedures (but not an audit in accordance with generally accepted auditing standards) consisting of:

(a) Reading the minutes of the meetings of the stockholders, the board of directors, executive committee and audit committee of the Company and the boards of directors and executive committees of its subsidiaries as set forth in the minute books through a specified date not more than five business days prior to the date of delivery of such letter;

(b) Performing the procedures specified by the American Institute of Certified Public Accountants for a review of interim financial information as described in SAS No. 71, Interim Financial Information, on the unaudited condensed consolidated interim financial statements of the Company and its consolidated subsidiaries included or incorporated by reference in the Registration Statement and Prospectus and reading the unaudited interim financial data, if any, for the period from the date of the latest balance sheet included or incorporated by reference in the Registration Statement and Prospectus to the date of the latest available interim financial data; and

(c) Making inquiries of certain officials of the Company who have responsibility for financial and accounting matters regarding the specific items for which representations are requested below;

nothing has come to their attention as a result of the foregoing procedures that caused them to believe that:

(1) the unaudited condensed consolidated interim

financial statements, included or incorporated by reference in the Registration Statement and Prospectus, do not comply as to form in all material respects with the applicable accounting requirements of the 1934 Act and the 1934 Act Regulations thereunder;

(2) any material modifications should be made to the unaudited condensed consolidated interim financial statements, included or incorporated by

19

reference in the Registration Statement and Prospectus, for them to be in conformity with generally accepted accounting principles;

(3) (i) at the date of the latest available interim financial data and at the specified date not more than five business days prior to the date of the delivery of such letter, there was any change in the capital stock or the long-term debt (other than scheduled repayments of such debt) or any decreases in stockholders' equity of the Company and the subsidiaries on a consolidated basis as compared with the amounts shown in the latest balance sheet included or incorporated by reference in the Registration Statement and the Prospectus or (ii) for the period from the date of the latest available financial data to a specified date not more than five business days prior to the delivery of such letter, there was any change in the capital stock or the long-term debt (other than scheduled repayments of such debt) or any decreases in stockholders' equity of the Company and the subsidiaries on a consolidated basis, except in all instances for changes or decreases which the Registration Statement and Prospectus discloses have occurred or may occur, or PricewaterhouseCoopers LLP shall state any specific changes or decreases.

(iv) The letter shall also state that PricewaterhouseCoopers LLP has carried out certain other specified procedures, not constituting an audit, with respect to certain amounts, percentages and financial information which are included or incorporated by reference in the Registration Statement and Prospectus and which are specified by the Representatives and agreed to by PricewaterhouseCoopers LLP, and has found such amounts, percentages and financial information to be in agreement with the relevant accounting, financial and other records of the Company and its subsidiaries identified in such letter.

In addition, at the time this Agreement is executed, PricewaterhouseCoopers LLP shall have furnished to the Representatives a letter or letters, dated the date of this Agreement, in form and substance satisfactory to the Representatives, to the effect set forth in this subsection 9.

(10) At Closing Time, counsel for the Underwriters shall have been furnished with such documents and opinions as they may require for the purpose of enabling them to pass upon the issuance and sale of the Capital Securities as herein contemplated and related proceedings, or in order to evidence the accuracy of any of the representations or warranties, or the fulfillment of any of the conditions, herein contained; and all proceedings taken by the Offerors, in connection with the issuance and sale of the Capital Securities as herein contemplated shall be satisfactory in form and substance to the Representatives and Stroock & Stroock & Lavan LLP, counsel for the Underwriters.

(11) At Closing Time, at least one "nationally recognized statistical rating organization" (as defined for purposes of Rule 436(g) under the 1933 Act), has rated the Capital Securities in one of its four highest rating categories and there shall not have occurred any decrease in the ratings of any of the securities of the Company or of the Capital Securities by any nationally recognized statistical rating organization, and no such organization shall have publicly

20

announced that it has under surveillance or review its rating of any of the Company's securities or any of the Capital Securities for a possible downgrade.

If any condition specified in this Section shall not have been fulfilled in all material respects when and as required to be fulfilled, this Agreement may be terminated by the Representatives by notice to the Offerors, in writing or by telephone or telegraph confirmed in writing, at any time at or prior to Closing Time, and such termination shall be without liability of any party to any other party except as provided in Section 4 hereof, and except that Sections 1, 6, and 7 shall survive any such termination and will remain in full force and effect.

(a) The Offerors jointly and severally agree to indemnify and hold harmless each Underwriter and each person who controls any Underwriter within the meaning of either the 1933 Act or the 1934 Act against any and all losses, claims, damages or liabilities, joint or several, to which they or any of them may become subject under the 1933 Act, the 1934 Act or other Federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement as originally filed or in any amendment thereof, or arise out of or are based upon omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Prospectus, or any amendment or supplement thereof, or arise out of or are based upon any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and agrees to reimburse each such indemnified party for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that (i) the Offerors will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission made therein in reliance upon and in conformity with written information furnished to the Offerors by or on behalf of any Underwriter through the Representatives specifically for use in connection with the preparation thereof, or arises out of or is based upon statements in or omissions from that part of the Registration Statement which shall constitute the Statement of Eligibility and Qualification of the Trustee (Form T-1) under the Trust Indenture Act of any Trustee, and (ii) such indemnity with respect to the preliminary Prospectus or any final Prospectus shall not inure to the benefit of any Underwriter (or any person controlling such Underwriter) from whom the person asserting any such loss, claim, damage or liability purchased the Capital Securities which are the subject thereof if such person did not receive a copy of the final Prospectus (or the final Prospectus as amended or supplemented) excluding documents incorporated therein by reference at or prior to the confirmation of the sale of such Capital Securities to such person in any case where such delivery is required by the 1933 Act and the untrue statement or omission of a material fact contained in any preliminary Prospectus was corrected in the final Prospectus or the final

21

Prospectus as amended or supplemented. This indemnity agreement will be in addition to any liability which the Offerors may otherwise have.

(b) Each Underwriter severally agrees to indemnify and hold harmless the Company, the Trust, the Trustees and each of the Company's directors, each of the Company's officers who signs the Registration Statement and each of the Trustees who signs the Registration Statement, and each person who controls the Company or the Trust within the meaning of either the 1933 Act or the 1934 Act, to the same extent as the foregoing indemnity from the Offerors to each Underwriter, but only with reference to written information relating to such Underwriter furnished to the Offerors by or on behalf of such Underwriter through the Representatives specifically for use in the preparation of the documents referred to in the foregoing indemnity. This indemnity agreement will be in addition to any liability which any Underwriter may otherwise have. The Offerors acknowledge that the statements set forth in the last paragraph of the cover page and under the heading "Underwriting" or "Plan of Distribution" in any preliminary Prospectus or the final Prospectus constitute the only information furnished in writing by or on behalf of the several Underwriters for inclusion in the documents referred to in the foregoing indemnity, and the Representatives confirm that such statements are correct.

(c) Promptly after receipt by an indemnified party under this Section 6 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 6, notify the indemnifying party in writing of the commencement thereof; but the omission so to notify the indemnifying party will not relieve it from any liability which it may have to any indemnified party otherwise than under this Section 6. In case any such action is brought against any indemnified party, and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein, and, to the extent that it may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof, with counsel satisfactory to such indemnified party; provided, however, that if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties. Upon receipt of notice from the indemnifying party to such indemnified

party of its election so to assume the defense of such action and approval by the indemnified party of counsel, the indemnifying party will not be liable to such indemnified party under this Section 6 for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof unless (i) the indemnified party shall have employed separate counsel in connection with the assertion of legal defenses in accordance with the proviso to the next preceding sentence (it being understood, however, that the indemnifying party shall not be liable for the expenses of more than one separate counsel, approved by the Representatives in the case of subparagraph (a), representing the indemnified parties under subparagraph (a) who are parties to such action), (ii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of commencement of the

22

action or (iii) the indemnifying party has authorized the employment of counsel for the indemnified party at the expense of the indemnifying party; and except that if clause (i) or (iii) is applicable, such liability shall be only in respect of the counsel referred to in such clause (i) or (iii).

(d) To provide for just and equitable contribution in circumstances in which the indemnification provided for in paragraph (a) of this Section 6 is due in accordance with its terms but is for any reason held by a court to be unavailable from the Offerors on the grounds of policy or otherwise, the Offerors and the Underwriters shall contribute to the aggregate losses, claims, damages and liabilities (including legal or other expenses reasonably incurred in connection with investigating or defending same) to which the Offerors and one or more of the Underwriters may be subject in such proportion so that the Underwriters are responsible for that portion represented by the percentage that the underwriting discount bears to the sum of such discount and the purchase price of the Securities specified in Schedule B hereto and the Offerors is responsible for the balance; provided, however, that (y) in no case shall any Underwriter (except as may be provided in any agreement among underwriters relating to the offering of the Capital Securities) be responsible for any amount in excess of the underwriting discount applicable to the Capital Securities purchased by such Underwriter hereunder and (z) no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 6, each person who controls an Underwriter within the meaning of the 1933 Act shall have the same rights to contribution as such Underwriter, and each person who controls either of the Offerors within the meaning of either the 1933 Act or the 1934 Act, each officer or trustee of the Offerors who shall have signed the Registration Statement and each director or trustee of the Offerors shall have the same rights to contribution as the Offerors, subject in each case to clause (y) of this paragraph (d). Any party entitled to contribution will, promptly after receipt of notice of commencement of any action, suit or proceeding against such party in respect of which a claim for contribution may be made against another party or parties under this paragraph (d), notify such party or parties from whom contribution may be sought, but the omission to so notify such party or parties shall not relieve the party or parties from whom contribution may be sought from any other obligation it or they may have hereunder or otherwise than under this paragraph (d).

(e) The Company agrees to indemnify the Trust against all losses, claims, damages or liabilities due from the Trust under Section 6(a) hereof.

SECTION 7. TERMINATION OF AGREEMENT. This Agreement shall be subject to termination in the absolute discretion of the Representatives, by notice given to the Offerors prior to delivery of and payment for the Securities, if prior to such time (i) trading in securities generally on the New York Stock Exchange shall have been suspended or limited or minimum prices shall have been established on such exchange, (ii) a banking moratorium shall have been declared by Federal authorities or (iii) there shall have occurred any outbreak or material escalation of hostilities or other calamity or crisis the effect of which on the financial markets of the United States is such as to make it, in the judgment of the Representatives, impracticable to market the Capital Securities.

23

SECTION 8. DEFAULT BY ONE OR MORE OF THE UNDERWRITERS. If one or more of the Underwriters shall fail at Closing Time to purchase the Capital Securities that it or they are obligated to purchase under this Agreement (the "Defaulted Securities"), the Representatives shall have the right, within 24 hours thereafter, to make arrangements for one or more of the non-defaulting Underwriters, or any other underwriters, to purchase all, but not less than all, of the Defaulted Securities in such amounts as may be agreed upon and upon the terms herein set forth; if, however, the Representatives shall not have completed such arrangements within such 24-hour period, then:

(a) if the number of Defaulted Securities does not exceed 10% of the Capital Securities each of the non-defaulting Underwriters shall be obligated, severally and not jointly, to purchase the full amount thereof in the proportions that their respective underwriting obligations hereunder bear to the underwriting obligations of all non-defaulting Underwriters, or

(b) if the number of Defaulted Securities exceeds 10% of the Capital Securities this Agreement shall terminate without liability on the part of any non-defaulting Underwriter.

No action taken pursuant to this Section shall relieve any defaulting Underwriter from liability in respect of its default.

In the event of any such default which does not result in a termination of this Agreement, either the Representatives or the Offerors shall have the right to postpone Closing Time for a period not exceeding seven days in order to effect any required changes in the Registration Statement or Prospectus or in any other documents or arrangements.

SECTION 9. NOTICES. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted by any standard form of telecommunication. Notices to the Underwriters shall be directed to them at Banc of America Securities LLC, 100 North Tryon Street, 7th Floor, Charlotte, North Carolina 28255, attention of _____, Managing Director; notices to the Trust and the Company shall be directed to them at Bank of America Corporation, Corporate Treasury Division, NC1-007-23-01, 100 North Tryon Street, Charlotte, N.C. 28255, attention of Karen A. Gosnell, Senior Vice President.

SECTION 10. PARTIES. This Agreement shall inure to the benefit of and be binding upon the Underwriters, the Trust, and the Company and their respective successors. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any person, firm or corporation, other than the Underwriters and the Trust and the Company and their respective successors and the controlling persons and officers, directors and trustees referred to in Section 6 and their heirs and legal representatives, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained. This Agreement and all conditions and provisions hereof are intended to be for the sole and exclusive benefit of the Underwriters and the Trust and the Company and their respective successors, and said controlling persons and officers, directors and trustees and their heirs and legal representatives,

24

and for the benefit of no other person, firm or corporation. No purchaser of Capital Securities from any Underwriter shall be deemed to be a successor by reason merely of such purchase.

SECTION 11. GOVERNING LAW AND TIME. This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and to be performed in said State. Except as otherwise set forth herein, specified times of day refer to New York City time.

SECTION 12. COUNTERPARTS. This Agreement may be executed by any one or more of the parties hereto in any number of counterparts, each of which shall be deemed to be an original, but all such respective counterparts shall together constitute one and the same instrument.

25

If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Company a counterpart hereof, whereupon this instrument, along with all counterparts, will become a binding agreement between the Underwriters and the Trust and the Company in accordance with its terms.

Very truly yours,

BANK OF AMERICA CORPORATION

By: _____
Name:
Title:

BAC CAPITAL TRUST __

By: _____

Name:
Title: Regular Trustee

CONFIRMED AND ACCEPTED,
as of the date first above written:

BANC OF AMERICA SECURITIES LLC

For themselves and as Representatives
of the several Underwriters named in
Schedule A hereto.

By: Banc of America Securities LLC

By: _____
Name:
Title:

26

SCHEDULE A

NAME OF UNDERWRITER - - - - -	NUMBER OF CAPITAL SECURITIES -----
Banc of America Securities LLC	=====

27

SCHEDULE B

Underwriting Agreement dated _____, 2001

Registration Statement No. 333-70984

Underwriters: Banc of America Securities LLC

Address of Underwriters: c/o Banc of America Securities LLC
100 North Tryon Street, 7/th/ Floor
Charlotte, North Carolina 28255
Attention:

Title, Purchase Price and Description of Securities:

Title: ____% Capital Securities due ____

1. The initial public offering price per security for the Capital Securities, determined as provided in said Section 2, shall be \$_____.
2. The purchase price per security for the Capital Securities to be paid by the several Underwriters shall be \$_____, being an amount equal to the initial public offering price set forth above.
3. The compensation per Capital Securities to be paid by the Company to the several Underwriters in respect of their commitments hereunder shall be \$_____.

28

=====

AMENDED AND RESTATED DECLARATION

OF TRUST

BAC CAPITAL TRUST [__]

Dated as of [_____, ____]

=====

CROSS-REFERENCE TABLE*

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

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

<TABLE>
<S>

<C>

ARTICLE 1
INTERPRETATION AND DEFINITIONS

SECTION 1.1	Definitions	1
-------------	-------------------	---

ARTICLE 2
TRUST INDENTURE ACT

SECTION 2.1	Trust Indenture Act; Application	8
SECTION 2.2	Lists of Holders of Securities	9
SECTION 2.3	Reports by the Property Trustee	9
SECTION 2.4	Periodic Reports to Property Trustee	9
SECTION 2.5	Evidence of Compliance with Conditions Precedent	9
SECTION 2.6	Events of Default; Waiver	10
SECTION 2.7	Event of Default or Nonpayment Notice	11

ARTICLE 3
ORGANIZATION

SECTION 3.1	Name	12
SECTION 3.2	Office	12
SECTION 3.3	Purpose	12
SECTION 3.4	Authority	12
SECTION 3.5	Title to Property of the Trust	12
SECTION 3.6	Powers and Duties of the Regular Trustees	13
SECTION 3.7	Prohibition of Actions by the Trust and the Trustees	15
SECTION 3.8	Powers and Duties of the Property Trustee	16
SECTION 3.9	Certain Duties and Responsibilities of the Property Trustee	18
SECTION 3.10	Certain Rights of Property Trustee	19
SECTION 3.11	Delaware Trustee	21
SECTION 3.12	Execution of Documents	22
SECTION 3.13	Not Responsible for Recitals or Issuance of Securities	22
SECTION 3.14	Duration of Trust	22
SECTION 3.15	Mergers	22

ARTICLE 4
SPONSOR

SECTION 4.1	Sponsor's Purchase of Common Securities	24
SECTION 4.2	Responsibilities of the Sponsor	24
SECTION 4.3	Covenants of the Sponsor	25

ARTICLE 5
TRUSTEES

SECTION 5.1	Number of Trustees	25
SECTION 5.2	Qualifications of Delaware Trustee	25
SECTION 5.3	Property Trustee; Eligibility	26
SECTION 5.4	Certain Qualifications of Regular Trustees and Delaware Trustee Generally	26
SECTION 5.5	Regular Trustees	26
SECTION 5.6	Appointment of Delaware Trustee	27

</TABLE>

i

<TABLE>
<S>

SECTION 5.7	Appointment, Removal and Resignation of Trustees	27
SECTION 5.8	Vacancies among Trustees	28
SECTION 5.9	Effect of Vacancies	29
SECTION 5.10	Meetings	29
SECTION 5.11	Delegation of Power	29
SECTION 5.12	Merger, Conversion, Consolidation, Amalgamation or Succession to Business	30

ARTICLE 6
DISTRIBUTIONS

SECTION 6.1	Distributions	30
-------------	---------------------	----

ARTICLE 7
ISSUANCE OF SECURITIES

SECTION 7.1	General Provisions Regarding Securities	30
SECTION 7.2	Paying Agent	31

ARTICLE 8
TERMINATION OF TRUST

SECTION 8.1	Termination of Trust	32
-------------	----------------------------	----

ARTICLE 9
TRANSFER OF INTERESTS

SECTION 9.1	Transfer of Securities	33
SECTION 9.2	Transfer of Certificates	33
SECTION 9.3	Deemed Security Holders	33
SECTION 9.4	Book-Entry Interests	34
SECTION 9.5	Notices to Clearing Agency	34
SECTION 9.6	Appointment of Successor Clearing Agency	34
SECTION 9.7	Definitive Capital Security Certificates	35
SECTION 9.8	Mutilated, Destroyed, Lost or Stolen Certificates	35

ARTICLE 10
LIMITATION OF LIABILITY OF HOLDERS OF SECURITIES, TRUSTEES OR OTHERS

SECTION 10.1	Liability	36
SECTION 10.2	Exculpation	36
SECTION 10.3	Fiduciary Duty	37
SECTION 10.4	Indemnification	38
SECTION 10.5	Outside Businesses	41

ARTICLE 11
ACCOUNTING

SECTION 11.1	Fiscal Year	41
SECTION 11.2	Certain Accounting Matters	41
SECTION 11.3	Banking	42
SECTION 11.4	Withholding	42

</TABLE>

ii

<TABLE>
<S>

<C>

ARTICLE 12
AMENDMENTS AND MEETINGS

SECTION 12.1	Amendments	42
--------------	------------------	----

SECTION 12.2	Meetings of the Holders of Securities; Action by Written Consent	44
--------------	--	----

ARTICLE 13
REPRESENTATIONS OF PROPERTY TRUSTEE AND DELAWARE TRUSTEE

SECTION 13.1	Representations and Warranties of Property Trustee	45
SECTION 13.2	Representations and Warranties of Delaware Trustee	46

ARTICLE 14
MISCELLANEOUS

SECTION 14.1	Notices	47
SECTION 14.2	Governing Law	48
SECTION 14.3	Intention of the Parties	48
SECTION 14.4	Headings	48
SECTION 14.5	Successors and Assigns	48
SECTION 14.6	Partial Enforceability	48
SECTION 14.7	Counterparts; Acceptance	48

</TABLE>

iii

AMENDED AND RESTATED
DECLARATION OF TRUST
OF
BAC CAPITAL TRUST []

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

WHEREAS, the Trustees and the Sponsor established BAC CAPITAL TRUST [] (the "Trust"), a trust under the Business Trust Act (as defined herein), pursuant to a Declaration of Trust dated as of September 26, 2001 (the "Original Declaration"), and an accompanying Certificate of Trust filed with the Secretary of State of the State of Delaware, for the sole purpose of issuing and selling securities representing undivided beneficial interests in the assets of the Trust and investing the gross proceeds thereof in Notes of the Note Issuer (each as defined herein);

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

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

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

ARTICLE 1
INTERPRETATION AND DEFINITIONS

SECTION 1.1 Definitions.

Unless the context otherwise requires:

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

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

(c) all references to "the Declaration" or "this Declaration" are to this Declaration as modified, supplemented or amended from time to time, and Annex I and Exhibits A-1 and A-2 shall be a part of this Declaration;

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

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

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

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

"Authorized Officer" of a Person means the Chief Executive Officer, President, Chief Financial Officer, any Vice President, Treasurer, Assistant Treasurer, or Associate General Counsel of a Person, a Regular Trustee or any other Person that is authorized to bind such Person.

"Book-Entry" means a book entry by a Clearing Agency as described in Section 9.4.

"Book-Entry Interest" means a beneficial interest in a Global Security, ownership and transfers of which shall be maintained and made through Book Entries by a Clearing Agency as described in Section 9.4.

"Business Day" means any day other than a day on which federal or state banking institutions in New York, New York or Charlotte, North Carolina are authorized or obligated by law, executive order or regulation to close.

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

"Capital Securities" shall mean the undivided preferred beneficial interests in the assets of the Trust denominated as "BAC Capital Trust [__] [% Capital Securities," (liquidation amount of \$[__] per Security) the terms of which are further described in Annex I hereto.

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

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

"Capital Securities Guarantee" means the guarantee agreement to be dated as of [_____, ____], of the Sponsor in respect of the Capital Securities.

"Capital Treatment Event" means the reasonable determination by the Company that, as a result of the occurrence of any amendment to, or change (including any announced prospective

2

change) in, the laws (or any regulations thereunder) of the United States or any political subdivision thereof, or as a result of any official or administrative pronouncement or action or judicial decision interpreting or applying such laws or regulations, which amendment or change is effective or such pronouncement, action or decision is announced on or after the date of original issuance of the Capital Securities, there is more than an insubstantial risk that the Company will not be entitled to treat an amount equal to the aggregate liquidation amount of the Capital Securities as Tier 1 capital (or the then equivalent thereof) for purposes of the capital adequacy guidelines of the Federal Reserve Board, as then in effect and applicable to the Company.

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

"Clearing Agency" means an organization registered as a "Clearing Agency" pursuant to Section 17A of the Exchange Act that is acting as depository for the Capital Securities and in whose name or in the name of a nominee of that organization shall be registered a Global Security and which shall undertake to effect Book-Entry transfers and pledges of the Capital Securities.

"Clearing Agency Participant" means a broker, dealer, bank, other financial

institution or other Person for whom from time to time the Clearing Agency effects Book-Entry transfers and pledges of securities deposited with the Clearing Agency.

"Closing Date" means the "Closing Time" under the Underwriting Agreement.

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

"Commission" means the Securities and Exchange Commission.

"Common Securities" shall mean the undivided common beneficial interests in the assets of the Trust denominated as "BAC Capital Trust [] []% Common Securities," (liquidation amount of \$___ per Security) the terms of which are further described in Annex I hereto.

"Common Securities Guarantee" means the guarantee agreement to be dated as of [_____, ____], of the Sponsor in respect of the Common Securities.

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

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

"Corporate Trust Office" means the office of the Property Trustee at which the corporate trust business of the Property Trustee shall, at any particular time, be principally administered, which office at the date of execution of this Agreement is located at 101 Barclay Street, Floor 21 West, New York, New York 10286.

3

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

"Definitive Capital Security Certificates" has the meaning set forth in Section 9.4.

"Delaware Trustee" has the meaning set forth in Section 5.1.

"Depository" means The Depository Trust Company or any successor Clearing Agency.

"Designation of Terms" has the meaning set forth in Section 7.1(a).

"Direct Action" has the meaning specified in Section 3.8(e).

"Distribution" means a distribution payable to Holders of Securities in accordance with Section 6.1.

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

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

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

"Global Security" has the meaning set forth in Section 9.4.

"Holder" means a Person in whose name a Security is registered (including, in the case of a Book-Entry Security, the Depository), such Person being a beneficial owner within the meaning of the Business Trust Act.

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

"Indenture" means collectively the Indenture dated as of October 1, 2001, between the Note Issuer and the Note Trustee and any board resolution or supplemental indenture pursuant to which the Notes are to be issued.

"Indirect Participant" has the meaning set forth in Section 2(c) of Annex I hereto.

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

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

"Investment Company Event" means the receipt by the Trust of an opinion of counsel experienced in such matters to the effect that, as a result of the occurrence of a change in law or regulation or a change in interpretation or application of law or regulation by any legislative

4

body, court, governmental agency or regulatory authority (a "Change in 1940 Act Law"), the Trust is or will be considered an investment company that is required to be registered under the Investment Company Act of 1940, as amended, which Change in 1940 Act Law becomes effective on or after the date of original issuance of the Capital Securities.

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

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

"Maturity Redemption Price" shall mean, for a redemption of the Securities at the Stated Maturity of the Notes, a redemption price equal to the principal amount of, plus accrued interest on, the Notes.

"Nonpayment" has the meaning set forth in Section 2.7(a).

"Note Issuer" means Bank of America Corporation, a Delaware corporation, or any successor entity in a merger or consolidation, in its capacity as issuer of the Notes under the Indenture.

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

"Notes" means the series of Notes to be issued by the Note Issuer under the Indenture to be held by the Property Trustee on behalf of the Trust.

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

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

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

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

5

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

"Optional Prepayment Price" shall mean with respect to the Notes, a

prepayment price equal to 100% of the outstanding principal amount of the Notes to be prepaid, plus any accrued and unpaid interest thereon up to but excluding the date of such prepayment.

"Optional Redemption Price" shall mean with respect to the Securities to be

redeemed, a redemption price equal to the Optional Prepayment Price.

"Paying Agent" has the meaning specified in Section 7.2.

"Payment Amount" has the meaning set forth in Section 6.1.

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

"Property Trustee" means the Trustee with the powers described in Article 3

and elsewhere herein and meeting the eligibility requirements set forth in Section 5.3.

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

"Quorum" means a majority of the Regular Trustees or, if there are only two Regular Trustees, both of them.

"Redemption/Distribution Notice" means a notice of any redemption of, or a

notice of any distribution of, Notes in exchange for Securities.

"Redemption Price" shall mean any or all of the Maturity Redemption Price,

the Special Event Redemption Price and the Optional Redemption Price.

"Regular Trustee" has the meaning set forth in Section 5.1.

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

"Responsible Officer" means, with respect to the Property Trustee, any

officer within the Corporate Trust Office of the Property Trustee, including any vice-president, any assistant vice-president, any assistant secretary, the treasurer, any assistant treasurer or other officer of the Corporate Trust Office of the Property Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of that officer's knowledge of and familiarity with the particular subject.

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

6

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

"Securities Act" means the Securities Act of 1933, as amended from time to

time, or any successor legislation.

"Securities Guarantees" means the Common Securities Guarantee and the

Capital Securities Guarantee.

"Special Event" means a Tax Event, a Capital Treatment Event or an

Investment Company Event.

"Special Event Prepayment Price" shall mean with respect to the Notes, a

prepayment price equal to 100% of the outstanding principal amount of the Notes,
plus any accrued and unpaid interest thereon so prepaid up to but excluding the
date of prepayment.

"Special Event Redemption Price" shall mean with respect to the Securities,

a redemption price equal to the Special Event Prepayment Price.

"Sponsor" means Bank of America Corporation, a Delaware corporation, or any

successor entity in a merger or consolidation, in its capacity as sponsor of the
Trust.

"Stated Maturity" shall mean [_____, ____], the date on which the Notes

shall mature, unless previously prepaid or redeemed.

"Successor Delaware Trustee" has the meaning set forth in Section

5.7(b) (ii).

"Successor Entity" has the meaning set forth in Section 3.15(b) (i).

"Successor Property Trustee" has the meaning set forth in Section

5.7(b) (i).

"Successor Securities" has the meaning set forth in Section 3.15(b) (i) (B).

"Super Majority" has the meaning set forth in Section 2.6(a) (ii).

"Tax Event" means that (i) the Company shall have received an opinion of a

nationally recognized independent tax counsel experienced in such matters to the
effect that, as a result of (a) any amendment to, or change (including any
announced prospective change) in, the laws or any regulations thereunder of the
United States or any political subdivision or taxing authority thereof or (b)
any official administrative pronouncement or judicial decision interpreting or
applying such laws or regulations, which amendment or change is effective or
such pronouncement or decision is announced on or after the date of original
issuance of the Capital Securities, there is more than an insubstantial risk
that interest payable on the Notes is not, or within 90 days of the date
thereof, will not be deductible, in whole or in part, by the Company for United
States federal income tax purposes or (ii) the Regular Trustees have been
informed by a nationally recognized independent tax counsel that a No
Recognition Opinion cannot be delivered. "No Recognition Opinion" means an
opinion of a nationally recognized independent tax counsel experienced in such
matters, which opinion may rely on published revenue rulings of the Internal
Revenue Service, to the effect that the holders of the Capital Securities and
Common

Securities will not recognize any gain or loss for United States federal income
tax purposes as a result of the dissolution of the Trust and the distribution of
the Notes.

"10% in liquidation amount of the Securities" means, except as provided in

the terms of the Capital Securities or by the Trust Indenture Act, Holders of
outstanding Securities voting together as a single class or, as the context may
require, Holders of outstanding Capital Securities or Holders of outstanding
Common Securities voting separately as a class, who are the record owners of 10%
or more of the aggregate liquidation amount (including the stated amount that

would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) of all outstanding Securities of the relevant class.

"Treasury Regulations" means the income tax regulations, including

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

"Trustee" or "Trustees" means each Person who has signed this Declaration

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

"Trust Indenture Act" means the Trust Indenture Act of 1939, as amended

from time to time, or any successor legislation.

"Underwriting Agreement" means the Underwriting Agreement for the offering

and sale of the Capital Securities and related Capital Securities Guarantee among the Sponsor, the Trust and the Underwriters named therein.

ARTICLE 2
TRUST INDENTURE ACT

SECTION 2.1 Trust Indenture Act; Application.

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

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

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

8

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

SECTION 2.2 Lists of Holders of Securities.

(a) Each of the Sponsor and the Regular Trustees on behalf of the Trust shall provide the Property Trustee (i) within 10 days after each record date for payment of Distributions, a list, in such form as the Property Trustee may reasonably require, of the names and addresses of the Holders of the Securities ("List of Holders") as of such record date, provided, that neither the Sponsor nor the Regular Trustees on behalf of

the Trust shall be obligated to provide such List of Holders at any time the List of Holders does not differ from the most recent List of Holders given to the Property Trustee by the Sponsor and the Regular Trustees on behalf of the Trust, and (ii) at any other time, within 30 days of receipt by the Trust of a written request for a List of Holders as of a date no more than 10 days before such List of Holders is given to the Property Trustee. The Property Trustee shall preserve, in as current a form as is reasonably practicable, all information contained in Lists of Holders given to it or which it receives in the capacity as Paying Agent (if acting in such capacity) provided, that the Property Trustee may destroy any List of

Holders previously given to it on receipt of a new List of Holders.

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

SECTION 2.3 Reports by the Property Trustee.

Within 60 days after March 31 of each year, the Property Trustee shall provide to the Holders of the Capital Securities such reports as are required by Section 313 of the Trust Indenture Act, if any, in the form and in the manner provided by Section 313 of the Trust Indenture Act. The Property Trustee shall

also comply with the requirements of Section 313(d) of the Trust Indenture Act.

SECTION 2.4 Periodic Reports to Property Trustee.

Each of the Sponsor and the Regular Trustees on behalf of the Trust shall provide to the Property Trustee such documents, reports and information as required by Section 314 (if any) and the compliance certificate required by Section 314 of the Trust Indenture Act in the form, in the manner and at the times required by Section 314 of the Trust Indenture Act.

SECTION 2.5 Evidence of Compliance with Conditions Precedent.

Each of the Sponsor and the Regular Trustees on behalf of the Trust shall provide to the Property Trustee such evidence of compliance with any conditions precedent, if any, provided for in this Declaration that relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given by an officer pursuant to Section 314(c) (1) may be given in the form of an Officers' Certificate.

9

SECTION 2.6 Events of Default; Waiver.

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

Default under the Indenture:

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

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

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

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

Default under the Indenture:

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

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

10

Super Majority represents of the aggregate principal amount of the

Notes outstanding;

provided further, each Holder of Common Securities will be deemed to have

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

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

SECTION 2.7 Event of Default or Nonpayment Notice.

(a) The Property Trustee shall, within 90 days after the occurrence of an Event of Default or a nonpayment of principal, premium, if any, or interest, when due, on the Notes ("Nonpayment") transmit by mail, first class postage prepaid, to the Holders of the Securities, notices of all Events of Default or Nonpayments with respect to the Securities actually known to a Responsible Officer of the Property Trustee, unless such Events of Default or Nonpayments have been cured before the giving of such notice;

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

(i) an Event of Default under the Indenture or a Nonpayment; or

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

11

ARTICLE 3
ORGANIZATION

SECTION 3.1 Name.

The Trust is named "BAC Capital Trust [__]," as such name may be modified from time to time by the Regular Trustees following written notice to the Holders of Securities. The Trust's activities may be conducted under the name of the Trust or any other name deemed advisable by the Regular Trustees.

SECTION 3.2 Office.

The address of the principal office of the Trust is c/o Bank of America Corporation, Attention: Corporate Treasury, Bank of America Corporate Center, NC1-007-23-01, 100 North Tryon Street, Charlotte, North Carolina 28255. On ten Business Days' written notice to the Holders of Securities, the Regular Trustees may designate another principal office.

SECTION 3.3 Purpose.

The exclusive purposes and functions of the Trust are (a) to issue and sell Securities and use the proceeds from such sale to acquire the Notes, and (b) except as otherwise limited herein, to engage in only those other activities necessary or incidental thereto. The Trust shall not borrow money, issue debt or reinvest proceeds derived from investments, pledge any of its assets, or

otherwise undertake (or permit to be undertaken) any activity that would cause the Trust not to be classified for United States federal income tax purposes as a grantor trust.

SECTION 3.4 Authority.

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

SECTION 3.5 Title to Property of the Trust.

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

12

SECTION 3.6 Powers and Duties of the Regular Trustees.

The Regular Trustees shall have the exclusive power, duty and authority to cause the Trust to engage in the following activities:

(a) to issue and sell the Capital Securities and the Common Securities in accordance with this Declaration; provided, however, that the

Trust may issue no more than one series of Capital Securities and no more than one series of Common Securities, and, provided further, that there

shall be no interests in the Trust other than the Securities, and the issuance of Securities shall be limited to a simultaneous issuance of both Capital Securities and Common Securities on the Closing Date;

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

(i) execute and file with the Commission a registration statement on Form S-3 prepared by the Sponsor, including any amendments thereto, pertaining to the Capital Securities;

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

(iii) to determine whether to list Capital Securities and to execute and file applications, prepared by the Sponsor, to any national or international stock exchange or the Nasdaq National Market for listing upon notice of issuance of any Capital Securities;

(iv) (a) execute and file with the Commission registration statements on Form 8-A, if required, including any amendments thereto, prepared by the Sponsor, relating to the registration of the Capital Securities under Section 12(b) of the Exchange Act and (b) execute and file with the Commission any other filings which may be required under the Exchange Act; and

(v) from time to time execute and enter into Underwriting Agreements providing for the sale of the Capital Securities;

(c) to purchase the Notes with the proceeds of the sale of the Capital Securities and the Common Securities;

(d) to give the Sponsor and the Property Trustee prompt written notice of the occurrence of a Special Event;

(e) to establish a record date with respect to all actions to be taken hereunder that require a record date be established, including and with respect to, for the purposes of Section 316(c) of the Trust Indenture Act, Distributions, voting rights, redemptions and exchanges, and to issue

Securities and Holders of Common Securities as to such actions and applicable record dates;

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

(g) to bring or defend, pay, collect, compromise, arbitrate, resort to legal action, or otherwise adjust claims or demands of or against the Trust ("Legal Action");

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) make any loans or incur any indebtedness other than loans represented by the Notes;

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

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

15

(vii) other than as provided in this Declaration, (A) direct the time, method and place of exercising any trust or power conferred upon the Note Trustee with respect to the Notes, (B) waive any past default that is waivable under the Indenture, (C) exercise any right to rescind or annul any declaration that the principal of all the Notes shall be due and payable, or (D) consent to any amendment, modification or termination of the Indenture or the Notes where such consent shall be required unless the Trust shall have received an opinion of counsel to the effect that such modification will not cause more than an insubstantial risk that for United States federal income tax purposes the Trust will not be classified as a grantor trust.

SECTION 3.8 Powers and Duties of the Property Trustee.

(a) The legal title to the Notes shall be owned by and held of record in the name of the Property Trustee in trust for the benefit of the Holders of the Securities. The right, title and interest of the Property Trustee to the Notes shall vest automatically in each Person who may hereafter be appointed as Property Trustee in accordance with Section 5.7. Such vesting and cessation of title shall be effective whether or not conveyancing documents with regard to the Notes have been executed and delivered.

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

(c) The Property Trustee shall:

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

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

(iii) upon written notice of distribution issued by the Regular Trustees in accordance with the terms of the Securities, engage in such ministerial activities as shall be necessary or appropriate to

Notes to Holders of Securities upon the occurrence of a Special Event or other specified circumstances pursuant to the terms of the Securities.

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

(e) The Property Trustee shall take any Legal Action which arises out of or in connection with an Event of Default of which a Responsible Officer of the Property Trustee has actual knowledge or the Property Trustee's duties and obligations under this Declaration or the Trust Indenture Act; provided however, that if a Nonpayment has occurred and is continuing, a Holder of Capital Securities may institute directly a proceeding for enforcement of payment to such Holder of the principal of, premium, if any, or interest on the Notes having a principal amount equal to the aggregate liquidation amount of the Capital Securities of such Holder (a "Direct Action") after the respective due date specified in the Notes. In connection with such Direct Action, the rights of the Holders of the Common Securities will be subrogated to the rights of such Holder of Capital Securities to the extent of any payment made by the Note Issuer to such Holder of Capital Securities in such Direct Action.

(f) The Property Trustee shall not resign as a Trustee unless either:

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

(ii) a Successor Property Trustee has been appointed and has accepted that appointment in accordance with Section 5.7.

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

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

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

The Property Trustee must exercise the powers set forth in this Section 3.8 in a manner that is consistent with the purposes and functions of the Trust set out in Section 3.3, and the

Property Trustee shall not take any action that is inconsistent with the purposes and functions of the Trust set out in Section 3.3.

SECTION 3.9 Certain Duties and Responsibilities of the Property Trustee.

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

(b) No provision of this Declaration shall be construed to relieve the Property Trustee from liability for its own negligent action, its own

negligent failure to act, or its own willful misconduct, except that:

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

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

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

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

(iii) the Property Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a Majority in liquidation amount of the Securities

18

relating to the time, method and place of conducting any proceeding for any remedy available to the Property Trustee, or exercising any trust or power conferred upon the Property Trustee under this Declaration;

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

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

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

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

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

SECTION 3.10 Certain Rights of Property Trustee.

(a) Subject to the provisions of Section 3.9:

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

19

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

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

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

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

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

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

20

(viii) the Property Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, custodians, nominees or attorneys;

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

(x) whenever in the administration of this Declaration the Property Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder, the Property Trustee (i) may request instructions from the Holders of the Securities which instructions may only be given by the Holders of the same proportion in liquidation amount of the Securities

as would be entitled to direct the Property Trustee under the terms of the Securities in respect of such remedy, right or action, (ii) may refrain from enforcing such remedy or right or taking such other action until such instructions are received, and (iii) shall be protected in conclusively relying on or acting in accordance with such instructions;

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

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

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

SECTION 3.11 Delaware Trustee.

Notwithstanding any other provision of this Declaration other than Section 5.2, the Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities of the Regular Trustees or the Property Trustee described in this Declaration. Except as set forth in Section 5.2, the Delaware Trustee shall be a

21

Trustee for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Business Trust Act.

SECTION 3.12 Execution of Documents.

Unless otherwise determined by the Regular Trustees, and except as otherwise required by the Business Trust Act, any Regular Trustee is authorized to execute on behalf of the Trust any documents that the Regular Trustees have the power and authority to execute pursuant to Section 3.6; provided that, the registration statement referred to in Section 3.6(b), including any amendments thereto, shall be signed by a majority of the Regular Trustees holding office at the time of such signing.

SECTION 3.13 Not Responsible for Recitals or Issuance of Securities.

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

SECTION 3.14 Duration of Trust.

The Trust, unless terminated pursuant to the provisions of Article VIII hereof, shall have existence for 55 years from January 1, 2001.

SECTION 3.15 Mergers.

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

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

(i) if the Trust is not the survivor, such successor entity

(the "Successor Entity") either:

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

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

22

(ii) the Note Issuer expressly acknowledges a trustee of the Successor Entity that possesses the same powers and duties as the Property Trustee as the Holder of the Notes;

(iii) the Capital Securities or any Successor Securities which are Capital Securities are listed, or any Successor Securities of the Capital Securities will be listed upon notification of issuance, on any national or international securities exchange or with another organization, if any, on which the Capital Securities are then listed or quoted;

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

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

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

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

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

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

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

(viii) the Sponsor guarantees the obligations of such Successor Entity under the Successor Securities at least to the extent provided by the Capital Securities Guarantee and the Common Securities Guarantee.

(c) Notwithstanding Section 3.15(b), the Trust shall not, except with the consent of Holders of 100% in liquidation amount of the Securities, consolidate,

23

amalgamate, merge with or into, or be replaced by any other entity or permit any other entity to consolidate, amalgamate, merge with or into, or replace it if such consolidation, merger, amalgamation or replacement would cause the Trust or Successor Entity to be classified as other than a grantor trust for United States federal income tax purposes.

ARTICLE 4
SPONSOR

SECTION 4.1 Sponsor's Purchase of Common Securities.

On the Closing Date the Sponsor will purchase all of the Common Securities issued by the Trust, in an amount at least equal to 3% of the capital of the Trust, at the same time as the Capital Securities are sold.

SECTION 4.2 Responsibilities of the Sponsor.

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

(a) to prepare for filing by the Trust with the Commission a registration statement on Form S-3 in relation to the Capital Securities, including any amendments thereto;

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

(c) to prepare for filing when required by the Trust applications to any national or international stock exchange or the Nasdaq National Market for listing upon notice of issuance of any Capital Securities if the Capital Securities are to be listed;

(d) to prepare for filing by the Trust with the Commission (i) any required registration statements on Form 8-A relating to the registration of the Capital Securities under Section 12(b) of the Exchange Act, including any amendments thereto and (ii) any other filings required under the Exchange Act; and

(e) to negotiate the terms of the Underwriting Agreement providing for the sale of the Capital Securities and the Capital Securities Guarantee.

In addition, the Sponsor shall have the right at any time to cause the Trust to be dissolved and the Notes held by the Trust to be distributed to Holders of the Securities.

24

SECTION 4.3 Covenants of the Sponsor.

For so long as the Capital Securities remain outstanding, the Sponsor will covenant (i) to maintain 100% direct or indirect ownership of the Common Securities, (ii) to use its reasonable best efforts to cause the Trust (a) to remain a statutory business trust, except as permitted by this Declaration in connection with the Trust's liquidation, merger, or consolidation, and (b) to not be classified as an association taxable as a corporation or a publicly traded partnership taxable as a corporation for United States federal income tax purposes and (iii) to use its reasonable best efforts to cause each Holder of Securities to be treated as owning an undivided beneficial ownership interest in the assets of the Trust.

ARTICLE 5
TRUSTEES

SECTION 5.1 Number of Trustees.

The number of Trustees of this Trust shall be four, and:

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

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

number of Trustees shall in no event be less than two; provided further

that (1) one Trustee, in the case of a natural person, shall be a person who is a resident of the State of Delaware or that, if not a natural person, is an entity which has its principal place of business in the State of Delaware (the "Delaware Trustee"); (2) there shall be at least one Trustee who is an employee or officer of, or is affiliated with the Sponsor (a "Regular Trustee"); and (3) one Trustee shall be the Property Trustee for so long as this Declaration is required to qualify as an indenture under the Trust Indenture Act, and such Trustee may also serve as Delaware

Trustee if it meets the applicable requirements.

SECTION 5.2 Qualifications of Delaware Trustee.

If required by the Business Trust Act, the Delaware Trustee shall be:

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

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

provided that, if the Property Trustee has its principal place of business

in the State of Delaware and otherwise meets the requirements of applicable law, then the Property Trustee shall also be the Delaware Trustee and Section 3.11 shall have no application.

25

SECTION 5.3 Property Trustee; Eligibility.

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

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

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

(b) If at any time the Property Trustee shall cease to be eligible to so act under Section 5.3(a), the Property Trustee shall immediately resign in the manner and with the effect set forth in Section 5.7(c).

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

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

(e) The initial Property Trustee shall be The Bank of New York.

SECTION 5.4 Certain Qualifications of Regular Trustees and Delaware

Trustee Generally.

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

SECTION 5.5 Regular Trustees.

As of the date of this Declaration, the Regular Trustees shall be Karen A. Gosnell and James T. Houghton.

26

(a) Except as expressly set forth in this Declaration and except if a meeting of the Regular Trustees is called with respect to any matter over which the Regular Trustees have power to act, any power of the Regular

Trustees may be exercised by, or with the consent of, any one such Regular Trustee.

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

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

SECTION 5.6 Appointment of Delaware Trustee.

The initial Delaware Trustee shall be The Bank of New York (Delaware).

SECTION 5.7 Appointment, Removal and Resignation of Trustees.

(a) Subject to Section 5.7(b), Trustees may be appointed or removed without cause at any time:

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

(ii) after the issuance of any Securities, by vote of the Holders of a Majority in liquidation amount of the Common Securities voting as a class at a meeting of the Holders of the Common Securities or by unanimous written consent of the Holders of the Common Securities.

(b) (i) the Property Trustee shall not be removed in accordance with Section 5.7(a) until a successor trustee possessing the qualifications to act as Property Trustee under Section 5.3 (a "Successor Property Trustee") has been appointed and has accepted such appointment by written instrument executed by such Successor Property Trustee and delivered to the Regular Trustees and the Sponsor; and

(ii) the Delaware Trustee shall not be removed in accordance with Section 5.7(a) until a successor Trustee possessing the qualifications to act as Delaware Trustee under Sections 5.2 and 5.4 (a "Successor Delaware Trustee") has been appointed and has accepted such appointment by written instrument executed by such Successor Delaware Trustee and delivered to the Regular Trustees and the Sponsor.

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

(i) No such resignation of the Property Trustee shall be effective:

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

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

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

(d) The Holders of the Common Securities shall use their best efforts to promptly appoint a Successor Delaware Trustee or Successor Property Trustee as the case may be if the Property Trustee or the Delaware

Trustee delivers an instrument of resignation in accordance with this Section 5.7.

(e) If no Successor Property Trustee or Successor Delaware Trustee shall have been appointed and accepted appointment as provided in this Section 5.7 within 60 days after delivery of an instrument of resignation or removal, the Property Trustee or Delaware Trustee resigning or being removed, as applicable, may petition any court of competent jurisdiction for appointment of a Successor Property Trustee or Successor Delaware Trustee. Such court may thereupon, after prescribing such notice, if any, as it may deem proper and prescribe, appoint a Successor Property Trustee or Successor Delaware Trustee, as the case may be.

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

SECTION 5.8 Vacancies among Trustees.

If a Trustee ceases to hold office for any reason and the number of Trustees is not reduced pursuant to Section 5.1, or if the number of Trustees is increased pursuant to Section 5.1, a vacancy shall occur. A resolution certifying the existence of such vacancy by the Regular Trustees or, if there are more than two, a majority of the Regular Trustees shall be conclusive

28

evidence of the existence of such vacancy. The vacancy shall be filled with a Trustee appointed in accordance with Section 5.7.

SECTION 5.9 Effect of Vacancies.

The death, resignation, retirement, removal, bankruptcy, dissolution, liquidation, incompetence or incapacity to perform the duties of a Trustee shall not operate to annul the Trust. Whenever a vacancy in the number of Regular Trustees shall occur, until such vacancy is filled by the appointment of a Regular Trustee in accordance with Section 5.7, the Regular Trustees in office, regardless of their number, shall have all the powers granted to the Regular Trustees and shall discharge all the duties imposed upon the Regular Trustees by this Declaration.

SECTION 5.10 Meetings.

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

SECTION 5.11 Delegation of Power.

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

(b) The Regular Trustees shall have power to delegate from time to time to such of their number or to officers of the Trust the doing of such things and the execution of such instruments either in the name of the Trust or the names of the Regular Trustees or otherwise as the Regular Trustees may deem expedient, to the extent such delegation is

29

not prohibited by applicable law or contrary to the provisions of the Trust, as set forth herein.

SECTION 5.12 Merger, Conversion, Consolidation, Amalgamation or Succession

to Business.

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

ARTICLE 6
DISTRIBUTIONS

SECTION 6.1 Distributions.

Holders shall receive Distributions at the times and in accordance with the applicable terms of the relevant Holder's Securities. If and to the extent that the Note Issuer makes a payment of interest (including Compounded Interest, as defined in the Indenture) and Additional Interest (as defined in the Indenture), premium and/or principal on the Notes held by the Property Trustee (the amount of any such payment being a "Payment Amount"), the Property Trustee shall and is directed, to the extent funds are available for that purpose and without further action by the Regular Trustees, to make a Distribution of the Payment Amount to Holders. The term "Distributions" as used herein includes such cash distributions and any such interest payable unless otherwise stated. Distributions shall be made on the Capital Securities and the Common Securities in accordance with the preferences set forth in their respective terms.

ARTICLE 7
ISSUANCE OF SECURITIES

SECTION 7.1 General Provisions Regarding Securities.

(a) The Regular Trustees shall on behalf of the Trust issue the Capital Securities which shall have such terms as are set forth in a completed Designation of Terms in the form attached hereto as Annex I, with such additions, deletions, modifications and completions as may be approved by the Regular Trustees (the "Designation of Terms"), and one class of Common Securities representing undivided beneficial interests in the assets of the Trust having such terms as are set forth in a completed Designation of Terms. The Trust shall issue no securities or other interests in the assets of the Trust other than the Capital Securities and the Common Securities.

(b) The Securities are subject to redemption as provided in the Designation of Terms.

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

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

(e) Upon issuance of the Securities as provided in this Declaration, the Securities so issued shall be deemed to be validly issued, fully paid and non-assessable.

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

(g) The Securities are not, and shall not be deemed to be, savings accounts or bank deposits or an obligation of or guaranteed by any banking affiliate of the Note Issuer and are not insured by the Federal Deposit Insurance Corporation or any other governmental agency.

SECTION 7.2 Paying Agent.

In the event that the Capital Securities are not in Book-Entry only form, the Trust shall maintain in New York, New York, an office or agency where the Capital Securities may be presented for payment ("Paying Agent"). The Trust may appoint the Paying Agent and may appoint one or more additional paying agents in such other locations as it shall determine and shall make such appointment in any other location required by law or the rules of any securities exchange on which the Capital Securities may be listed. The term "Paying Agent" includes any additional paying agent. The Trust may change any Paying Agent without prior notice to any Holder. The Trust shall notify the Property Trustee of the name and address of any Paying Agent not a party to this Declaration. If the Trust fails to appoint or maintain another entity as Paying Agent, the Property Trustee shall act as such. The Trust or any of its Affiliates may act

31

as Paying Agent. The Property Trustee shall initially act as Paying Agent for the Capital Securities and the Trust shall initially act as Paying Agent for the Common Securities.

ARTICLE 8
TERMINATION OF TRUST

SECTION 8.1 Termination of Trust.

(a) The Trust shall dissolve:

(i) upon the bankruptcy of the Sponsor;

(ii) upon the filing of a certificate of dissolution or its equivalent with respect to the Sponsor; upon the consent of a Majority in liquidation amount of the Securities voting together as a single class to dissolve the Trust; or upon the revocation of the Sponsor's charter and the expiration of 90 days after the date of revocation without a reinstatement thereof;

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

(iv) when all of the Securities shall have been called for redemption and the amounts necessary for redemption thereof shall have been paid to the Holders in accordance with the terms of the Securities;

(v) at the election of the Sponsor at any time pursuant to which the Trust shall have been dissolved in accordance with the terms of the Securities and all of the Notes shall have been distributed to the Holders of Securities in exchange for all of the Securities; or

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

(b) As soon as is practicable after the occurrence of an event referred to in Section 8.1(a), the Trustees shall, after satisfaction of all obligations of the Trust, file a certificate of cancellation with the Secretary of State of the State of Delaware and the Trust shall terminate.

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

32

ARTICLE 9
TRANSFER OF INTERESTS

SECTION 9.1 Transfer of Securities.

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

(b) Subject to this Article IX and Section 4.3, the Sponsor and any Related Party may only transfer Common Securities to the Sponsor or a Related Party of the Sponsor; provided that, any such transfer is subject

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

(i) the Trust would not be classified for United States federal income tax purposes as an association or a publicly traded partnership taxable as a corporation; and

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

SECTION 9.2 Transfer of Certificates.

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

SECTION 9.3 Deemed Security Holders.

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

33

SECTION 9.4 Book-Entry Interests.

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

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

(b) the Trust and the Trustees shall be entitled to deal with the

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

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

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

SECTION 9.5 Notices to Clearing Agency.

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

SECTION 9.6 Appointment of Successor Clearing Agency.

If any Clearing Agency elects to discontinue its services as securities depository with respect to the Capital Securities, the Regular Trustees may, in their sole discretion, appoint a successor Clearing Agency with respect to such Capital Securities.

SECTION 9.7 Definitive Capital Security Certificates.

If:

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

(b) the Regular Trustees elect after consultation with the Sponsor to terminate the Book-Entry system through the Clearing Agency with respect to the Capital Securities;

then:

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

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

Otherwise, Definitive Capital Security Certificates will not be issued.

SECTION 9.8 Mutilated, Destroyed, Lost or Stolen Certificates.

If:

(a) any mutilated Certificates should be surrendered to the Regular Trustees, or if the Regular Trustees shall receive evidence to their

satisfaction of the destruction, loss or theft of any Certificate; and

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

then, in the absence of notice that such Certificate shall have been acquired by a bona fide purchaser, any Regular Trustee on behalf of the Trust shall execute and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Certificate, a new Certificate of like

35

denomination. In connection with the issuance of any new Certificate under this Section 9.8, the Regular Trustees may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith. Any duplicate Certificate issued pursuant to this Section shall constitute conclusive evidence of an ownership interest in the relevant Securities, as if originally issued, whether or not the lost, stolen or destroyed Certificate shall be found at any time.

ARTICLE 10
LIMITATION OF LIABILITY OF
HOLDERS OF SECURITIES, TRUSTEES OR OTHERS

SECTION 10.1 Liability.

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

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

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

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

SECTION 10.2 Exculpation.

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

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

36

SECTION 10.3 Fiduciary Duty.

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

the duties imposed on the Property Trustee under the Trust Indenture Act), are agreed by the parties hereto to replace such other duties and liabilities of such Indemnified Person.

(b) Unless otherwise expressly provided herein:

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

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

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

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

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

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

37

SECTION 10.4 Indemnification.

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

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

deem proper.

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

(iv) Any indemnification under paragraphs (i) and (ii) of this Section 10.4(a) (unless ordered by a court) shall be made by the Note Issuer only as

38

authorized in the specific case upon a determination that indemnification of the Company Indemnified Person is proper in the circumstances because he has met the applicable standard of conduct set forth in paragraphs (i) and (ii). Such determination shall be made (1) by the Regular Trustees by a majority vote of a quorum consisting of such Regular Trustees who were not parties to such action, suit or proceeding, (2) if such a quorum is not obtainable, or, even if obtainable, if a quorum of disinterested Regular Trustees so directs, by independent legal counsel in a written opinion, or (3) by the Holders of the Common Securities.

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

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

39

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

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

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

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

40

SECTION 10.5 Outside Businesses.

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

ARTICLE 11 ACCOUNTING

SECTION 11.1 Fiscal Year.

The fiscal year ("Fiscal Year") of the Trust shall be the calendar year or such other year as is required by the Code.

SECTION 11.2 Certain Accounting Matters.

(a) At all times during the existence of the Trust, the Regular Trustees shall keep, or cause to be kept, full books of account, records and supporting documents, which shall reflect in reasonable detail each transaction of the Trust.

(b) The Regular Trustees shall cause to be duly prepared and delivered to each of the Holders of Securities any annual United States

federal income tax information statement, required by the Code, containing such information with regard to the Securities held by each Holder as is required by the Code and the Treasury Regulations. The Regular Trustees shall endeavor to deliver all such statements within such period after the end of each Fiscal Year of the Trust as required by the Treasury Regulations; and

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

41

SECTION 11.3 Banking.

The Trust shall maintain one or more bank accounts in the name and for the sole benefit of the Trust; provided, however, that all payments of funds in

respect of the Notes held by the Property Trustee shall be made directly to the Property Trustee Account and no other funds of the Trust shall be deposited in the Property Trustee Account. The sole signatories for such accounts shall be designated by the Regular Trustees; provided, however, that the Property Trustee

shall designate the signatories for the Property Trustee Account.

SECTION 11.4 Withholding.

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

ARTICLE 12 AMENDMENTS AND MEETINGS

SECTION 12.1 Amendments.

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

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

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

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

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

42

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

(ii) unless, in the case of any proposed amendment which

affects the rights, powers, duties, obligations or immunities of the Property Trustee, the Property Trustee shall have first received:

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

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

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

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

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

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

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

(d) Section 10.1(b) and this Section 12.1 shall not be amended without the consent of all of the Holders of the Securities.

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

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

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

(i) cure any ambiguity;

43

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

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

(iv) conform to any change in Rule 3a-5 or any written change in interpretation or application of Rule 3a-5 by any legislative body, court, government agency or regulatory authority which amendment does not have a material adverse effect on the right, preferences or privileges of the Holders; and

(v) modify, eliminate and add to any provision of the Declaration to such extent as may be necessary to carry out its provisions, including making any redemption of the Notes or dissolution of the Trust and distribution of the Notes to the Holders of the Securities in exchange for all of the Securities.

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

Consent.

(a) Meetings of the Holders of any class of Securities may be called at any time by the Regular Trustees (or as provided in the terms of the Securities) to consider and act on any matter on which Holders of such class of Securities are entitled to act under the terms of this Declaration, the terms of the Securities or the rules of any stock exchange on which the Capital Securities are listed or admitted for trading. The Regular Trustees shall call a meeting of the Holders of such class if directed to do so by the Holders of at least 10% in liquidation amount of

such class of Securities. Such direction shall be given by delivering to the Regular Trustees one or more calls in a writing stating that the signing Holders of Securities wish to call a meeting and indicating the general or specific purpose for which the meeting is to be called. Any Holders of Securities calling a meeting shall specify in writing the Security Certificates held by the Holders of Securities exercising the right to call a meeting and only those Securities specified shall be counted for purposes of determining whether the required percentage set forth in the second sentence of this paragraph has been met.

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

(i) notice of any such meeting shall be given to all the Holders of Securities having a right to vote thereat at least seven days and not more than 60 days before the date of such meeting. Whenever a vote, consent or approval of the Holders of Securities is permitted or required under this Declaration or the rules of any stock exchange on which the Capital Securities are listed or admitted for trading, such vote, consent or approval may be given at a meeting of the Holders of Securities. Any action that may be taken at a meeting of the Holders of Securities may be taken without a meeting if a consent in writing setting forth the action so taken is signed by the Holders of Securities owning not less than the minimum amount of Securities in liquidation amount that would be necessary to authorize or take such action at a meeting at which all Holders of Securities having a right to vote thereon were present and voting. Prompt notice of the

44

taking of action without a meeting shall be given to the Holders of Securities entitled to vote who have not consented in writing. The Regular Trustees may specify that any written ballot submitted to the Security Holder for the purpose of taking any action without a meeting shall be returned to the Trust within the time specified by the Regular Trustees;

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

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

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

ARTICLE 13
REPRESENTATIONS OF PROPERTY TRUSTEE
AND DELAWARE TRUSTEE

SECTION 13.1 Representations and Warranties of Property Trustee.

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

(a) the Property Trustee is a state or federal banking

corporation with trust powers and the authority to execute and deliver, and to carry out and perform its obligations under the terms of, this Declaration;

45

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

(c) the execution, delivery and performance of this Declaration by the Property Trustee does not conflict with or constitute a breach of the charter or by-laws of the Property Trustee; and

(d) no consent, approval or authorization of, or registration with or notice to, any New York State or federal banking authority is required for the execution, delivery or performance by the Property Trustee of this Declaration.

SECTION 13.2 Representations and Warranties of Delaware Trustee.

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

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

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

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

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

46

ARTICLE 14
MISCELLANEOUS

SECTION 14.1 Notices.

All notices provided for in this Declaration shall be in writing, duly signed by the party giving such notice, and shall be delivered, telecopied or mailed by first class mail, as follows:

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

BAC Capital Trust [__]
c/o Bank of America Corporation
Attention: Corporate Treasury
Bank of America Corporate Center
100 North Tryon Street
NC1-007-23-01
Charlotte, North Carolina 28255
Telecopy: (704) 386-0270

(b) if given to the Delaware Trustee, at the mailing address set forth

below (or such other address as the Delaware Trustee may give notice of to the Holders of the Securities):

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

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

The Bank of New York
101 Barclay Street, 21 West
New York, New York 10286
Attention: Corporate Trust Trustee Administration

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

Bank of America Corporation
Bank of America Corporate Center
100 North Tryon Street
NC1-007-23-01

Charlotte, North Carolina 28255
Attention: Corporate Treasury

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

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

SECTION 14.2 Governing Law.

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

SECTION 14.3 Intention of the Parties.

It is the intention of the parties hereto that the Trust be classified for United States federal income tax purposes as a grantor trust. The provisions of this Declaration shall be interpreted to further this intention of the parties.

SECTION 14.4 Headings.

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

SECTION 14.5 Successors and Assigns.

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

SECTION 14.6 Partial Enforceability.

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

SECTION 14.7 Counterparts; Acceptance.

This Declaration may contain more than one counterpart of the signature

page and this Declaration may be executed by the affixing of the signature of each of the Trustees to one of such counterpart signature pages. All of such counterpart signature pages shall be read as though

one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

Each Trustee, by its execution of a counterpart of this Declaration, acknowledges and accepts its appointment as Trustee.

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

Karen A. Gosnell, as Regular Trustee

James T. Houghton, as Regular Trustee

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

By: _____
Name:
Title:

THE BANK OF NEW YORK,
as Property Trustee

By: _____
Name:
Title:

BANK OF AMERICA CORPORATION, as Sponsor

By: _____
Name:
Title:

ANNEX I

BAC CAPITAL TRUST [__]
DESIGNATION OF TERMS OF
__% CAPITAL SECURITIES AND
__% COMMON SECURITIES

Pursuant to Section 7.1 of the Amended and Restated Declaration of Trust, dated as of [_____, ____] (as amended from time to time, the "Declaration"), the designation, rights, privileges, restrictions, preferences and other terms and provisions of the Capital Securities and the Common Securities are set out below (each capitalized term used but not defined herein has the meaning set forth in the Declaration);

1. Designation and Number.

(a) Capital Securities. [_____] Capital Securities of the Trust

(liquidation amount of \$[___] per Security) with an aggregate liquidation amount with respect to the assets of the Trust of [\$______], are hereby designated for purposes of identification only as "BAC Capital Trust [__] [__]% Capital Securities" (the "Capital Securities"). The Capital Security Certificates evidencing the Capital Securities shall be substantially in the form of Exhibit A-1 to the Declaration, with such changes and additions thereto or deletions therefrom as may be required by ordinary usage, custom or practice or to conform to the rules of any stock exchange on which the Capital Securities are listed.

(b) Common Securities. [_____] Common Securities of the Trust

(liquidation amount of \$[___] per Security) with an aggregate liquidation amount with respect to the assets of the Trust of [\$______], are hereby designated

for purposes of identification only as "BAC Capital Trust [] []% Common Securities" (the "Common Securities"). The Common Security Certificates evidencing the Common Securities shall be substantially in the form of Exhibit A-2 to the Declaration, with such changes and additions thereto or deletions therefrom as may be required by ordinary usage, custom or practice.

2. Distributions.

(a) Distributions payable on each Security will be fixed at a rate per annum of ___% (the "Coupon Rate") of the stated liquidation amount of \$[] per Security, such rate being the rate of interest payable on the Notes to be held by the Property Trustee. Distributions in arrears for more than one quarterly [semi-annual] period will bear interest thereon compounded quarterly [semi-annual] at the Coupon Rate (to the extent permitted by applicable law). A Distribution is payable only to the extent that payments are made in respect of the Notes held by the Property Trustee and to the extent the Property Trustee has funds available therefor. The amount of Distributions payable for any period will be computed on the basis of a 360-day year of twelve 30-day months. The amount of Distributions payable for any period shorter than a full distribution period will be computed on the basis of the actual number of days elapsed in a 360-day year of twelve 30-day months.

I-1

(b) Distributions on the Securities will be cumulative, will accrue from [], and will be payable quarterly [semi-annual] in arrears, on [January __, April __, July __ and October __] [January __ and July __] of each year, commencing on [], except as otherwise described below. The Note Issuer has the right under the Indenture to defer payments of interest on the Notes by extending the interest payment period from time to time on the Notes for a period not exceeding 20 [10] consecutive quarterly [semi-annual] periods (each an "Extension Period"), during which Extension Period no interest shall be due and payable on the Notes, provided that no

Extension Period may extend beyond the Stated Maturity. As a consequence of such deferral, Distributions also will be deferred on the Capital Securities for the same period. Despite such deferral, quarterly [semi-annual] Distributions will continue to accrue with interest thereon (to the extent permitted by applicable law) at the Coupon Rate compounded quarterly [semi-annually] during any such Extension Period. Prior to the termination of any such Extension Period, the Note Issuer may extend further such Extension Period; provided that such

Extension Period together with all such previous and further extensions thereof may not exceed 20 [10] consecutive quarterly [semi-annual] periods or extend beyond the Stated Maturity. Payments of accrued Distributions will be payable to Holders as they appear on the books and records of the Trust or the Clearing Agency, as the case may be, on the first record date after the end of the Extension Period. Upon the termination of any Extension Period and the payment of all amounts then due, the Note Issuer may commence a new Extension Period, subject to the above requirements. No interest shall be due and payable during an Extension Period, except at the end thereof, but the Note Issuer may repay at any time all or any portion of the interest accrued during an Extension Period.

(c) Distributions on the Securities will be payable to the Holders thereof as they appear on the books and records of the Trust on the relevant record dates. While the Capital Securities remain in Book-Entry only form, the relevant record dates shall be one Business Day prior to the relevant payment dates which payment dates correspond to the interest payment dates on the Notes. Payment of Distributions on the Securities held in Book-Entry only form will be made to the Depository in immediately available funds. The Depository's practice is to credit Clearing Agency Participants' accounts on the relevant payment date in accordance with their respective holdings shown on the Depository's records unless the Depository has reason to believe that it will not receive payments on such payment date. Payments by (i) Clearing Agency Participants and (ii) securities brokers and dealers, banks and trust companies and other entities that clear transactions through or maintain a direct or indirect custodial relationship with a Clearing Agency Participant (an "Indirect Participant") to Capital Security Beneficial Owners will be governed by standing instructions and customary practices and will be the responsibility of such Clearing Agency Participants and Indirect Participants and not of the Depository, the Trust or the Corporation, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of distributions to the Depository is the responsibility of the Trust, disbursement of such payments to Clearing Agency Participants is the responsibility of the Depository, and disbursement of such payments to the Capital Security Beneficial Owners is the responsibility of the Clearing Agency Participants and Indirect Participants. The relevant record dates for the Common Securities shall be the same record date as for the Capital Securities. If the Capital Securities shall not continue to remain in Book-Entry only form, the regular record dates for the Capital Securities shall be the [January 1, April 1, July 1 and October 1] [January 1 and July 1] prior to the relevant payment dates, which payment dates correspond to the interest payment dates on the Notes. Distributions payable on any Securities that are not punctually paid

on any Distribution payment date, as a result of the Note Issuer having failed to make a payment under the Notes, will cease to be payable to the Person in whose name such Securities are registered on the relevant record date, and such defaulted Distribution will instead be payable to the Person in whose name such Securities are registered on the special record date or other specified date determined in accordance with the Indenture. If any date on which Distributions are payable on the Securities is not a Business Day, then payment of the Distribution payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay) except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date.

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

3. Liquidation Distribution Upon Dissolution.

In the event of any voluntary or involuntary dissolution, winding-up or termination of the Trust, the Holders of the Securities on the date of the dissolution, winding-up or termination, as the case may be, will be entitled to receive out of the assets of the Trust available for distribution to Holders of Securities after satisfaction of liabilities of creditors an amount equal to the aggregate of the stated liquidation amount of \$[] per Security plus accrued and unpaid Distributions thereon to the date of payment (such amount being the "Liquidation Distribution"), unless, in connection with such dissolution, winding-up or termination, Notes in an aggregate stated principal amount equal to the aggregate stated liquidation amount of such Securities, with an interest rate equal to the Coupon Rate of, and bearing accrued and unpaid interest in an amount equal to the accrued and unpaid Distributions on, such Securities, shall be distributed on a Pro Rata basis to the Holders of the Securities in exchange for such Securities.

If, upon any such dissolution, the Liquidation Distribution can be paid only in part because the Trust has insufficient assets available to pay in full the aggregate Liquidation Distribution, then the amounts payable directly by the Trust on the Securities shall be paid on a Pro Rata basis. Holders of the Common Securities will be entitled to receive distributions upon any such dissolution Pro Rata with Holders of the Capital Securities, except that if an Event of Default has occurred and is continuing, the Capital Securities shall have a preference over the Common Securities with respect to such distributions.

4. Redemption and Distribution.

(a) The Securities are subject to redemption at the Stated Maturity, at any time after [], and in certain circumstances, following the occurrence of a Special Event as follows:

(i) Upon payment of the Notes at a payment price equal to the principal amount of, plus any accrued and unpaid interest thereon at the Stated Maturity, the proceeds from such payment shall be applied simultaneously to redeem the Securities at the Maturity Redemption Price.

(ii) In the event of a Special Event Prepayment prior to [], the proceeds from such Special Event Prepayment shall be applied simultaneously to redeem the Capital Securities at the Special Event Redemption Price.

(iii) The Securities also may be redeemed in whole or in part on or after [], contemporaneously with an optional prepayment of the Notes at a redemption price equal to the Optional Redemption Price. If fewer than all the outstanding Securities are to be so redeemed, the Common Securities and the Capital Securities will be redeemed Pro Rata and the Capital Securities to be redeemed will be as described in Section 4(d)(ii) below.

(b) If the Sponsor has given a notice of its election to terminate the Trust, the Regular Trustees shall dissolve the Trust and, after satisfaction of creditors, cause Notes held by the Property Trustee, having an aggregate principal amount equal to the aggregate stated liquidation amount of the Securities, with an interest rate equal to the Coupon Rate of, and bearing accrued and unpaid interest in an amount equal to the accrued and unpaid Distributions on, and having the same record date for payment as, the Securities, to be distributed to the Holders of the Securities in liquidation of

such Holders' interests in the Securities within 90 days following receipt of the Sponsor's notice of election.

(c) On and from the date fixed by the Regular Trustees for any distribution of Notes and dissolution of the Trust: (i) the Securities will no longer be deemed to be outstanding, (ii) the Depositary or its nominee as the record Holder of the Capital Securities, will receive a registered Global Security or Securities representing the Notes to be delivered upon such distribution and any certificates representing Securities, except for certificates representing Capital Securities held by the Depositary or its nominee (or any successor Clearing Agency or its nominee), will be deemed to represent beneficial interests in the Notes having an aggregate principal amount equal to the aggregate stated liquidation amount of, with an identical interest rate, and accrued and unpaid interest equal to accrued and unpaid Distributions on such Securities until such certificates are presented to the Note Issuer or its agent for transfer or reissue. The Trust may not redeem fewer than all the outstanding Securities unless all accrued and unpaid Distributions have been paid on all Securities for all quarterly Distribution periods terminating on or before the date of redemption. If the Notes are distributed to holders of the Securities, pursuant to the terms of the Indenture, the Note Issuer will use its best efforts to have the Notes listed on the securities exchange, if any, on which the Capital Securities were listed immediately prior to the distribution of the Notes.

(d) Redemption or Distribution Procedures shall be as follows:

(i) A Redemption/Distribution Notice will be given by the Trust by mail to each Holder of Securities to be redeemed or exchanged not fewer than 15 nor more than 60 days before the redemption date or exchange date which, in the case of a redemption, will be the date fixed for redemption of the Notes. For purposes of the calculation of the redemption date or exchange date and the dates on which notices are given pursuant to this Section 4(d)(i), a Redemption/ Distribution Notice shall be deemed to be given on the day such notice is first mailed by first-class mail, postage prepaid, to Holders of Securities. Each Redemption/Distribution Notice shall be addressed to the Holders of

I-4

Securities at the address of each such Holder appearing in the books and records of the Trust. No defect in the Redemption/Distribution Notice or in the mailing of either with respect to any Holder shall affect the validity of the redemption or exchange proceedings with respect to any other Holder.

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

(iii) If Securities are to be redeemed and the Trust gives a Redemption/Distribution Notice, which notice may only be issued if the Notes are repaid as set out in this Section 4 (which notice will be irrevocable), then (A) while the Capital Securities are in Book-Entry only form, with respect to the Capital Securities, by 12:00 noon, New York City time, on the redemption date, provided that the Note Issuer has paid the Property Trustee a sufficient amount of cash in connection with the related prepayment or maturity of the Notes, the Property Trustee will deposit irrevocably with the Depositary or its nominee (or successor Clearing Agency or its nominee) funds sufficient to pay the applicable Redemption Price with respect to the Capital Securities and will give the Depositary irrevocable instructions and authority to pay the Redemption Price to the Holders of the Capital Securities, and (B) with respect to Capital Securities issued in definitive form and Common Securities, provided that the Note Issuer has paid the Property Trustee a sufficient amount of cash in connection with the related prepayment or maturity of the Notes, the Property Trustee will pay the relevant Redemption Price to the Holders of such Securities by check mailed to the address of the relevant Holder appearing on the books and records of the Trust on the redemption date. If a Redemption/Distribution Notice shall have been given and funds deposited as required, if applicable, then immediately prior to the close of business on the date of such deposit, or on the redemption date, as applicable, Distributions will cease to accrue on the Securities so called for redemption and all rights of Holders of such Securities so called for redemption will cease, except the right of the Holders of such Securities to receive the Redemption Price, but without interest on

such Redemption Price. Neither the Regular Trustees nor the Trust shall be required to register or cause to be registered the transfer of any Securities that have been so called for redemption. If any date fixed for redemption of Securities is not a Business Day, then payment of the Redemption Price payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay) except that, if such Business Day falls in the next calendar year, such payment will be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date fixed for redemption. If payment of the Redemption Price in respect of any Securities is improperly withheld or refused and not paid either by the Property Trustee or by the Sponsor as guarantor pursuant to the relevant Securities Guarantee, Distributions on such Securities will continue to accrue from the original redemption date

I-5

to the actual date of payment, in which case the actual payment date will be considered the date fixed for redemption for purposes of calculating the Redemption Price.

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

(v) Subject to the foregoing and applicable law (including, without limitation, United States federal securities laws), provided the acquiror is not the Holder of the Common Securities or the obligor under the Indenture, the Sponsor or any of its subsidiaries may at any time and from time to time purchase outstanding Capital Securities by tender, in the open market or by private agreement.

5. Voting Rights - Capital Securities.

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

(b) Subject to the requirements set forth in this paragraph, the Holders of a Majority in aggregate liquidation amount of the Capital Securities, voting separately as a class may direct the time, method, and place of conducting any proceeding for any remedy available to the Property Trustee, or exercising any trust or power conferred upon the Property Trustee under the Declaration, including the right to direct the Property Trustee, as holder of the Notes, to (i) exercise the remedies available under the Indenture conducting any proceeding for any remedy available to the Note Trustee, or exercising any trust or power conferred on the Note Trustee with respect to the Notes, (ii) waive any past Event of Default and its consequences that is waivable under Section 5.01 of the Indenture, (iii) exercise any right to rescind or annul a declaration that the principal of all the Notes shall be due and payable, or (iv) consent to any amendment, modification or termination of the Indenture as a holder of the Notes provided, however, that, where a consent or action under the

Indenture would require the consent or act of the Holders of a Super Majority affected thereby the Property Trustee may only give such consent or take such action at the written direction of the Holders of at least the proportion in liquidation amount of the Capital Securities which the relevant Super Majority represents of the aggregate principal amount of the Notes outstanding. The Property Trustee shall not revoke any action previously authorized or approved by a vote of the Holders of the Capital Securities. Other than with respect to directing the time, method and place of conducting any remedy available to the Property Trustee or the Note Trustee as set forth above, the Property Trustee shall not take any action in accordance with the directions of the Holders of the Capital Securities under this paragraph unless the Property Trustee has obtained an opinion of tax counsel to the effect that for the purposes of United States federal income tax the Trust will not be classified as other than a grantor trust on account of such action. If a Nonpayment occurs on the date such interest or principal is otherwise payable (or in the case of redemption, on the redemption date), and such Nonpayment is continuing, a Holder of Capital Securities may institute a Direct Action after the respective due date specified in the Notes. In connection with

I-6

such Direct Action, the rights of the Holders of the Common Securities will be subrogated to the rights of such Holder of Capital Securities to the extent of any payment made by the Note Issuer to such Holder of Capital Securities in such

Direct Action. If the Property Trustee fails to enforce its rights under the Declaration, any Holder of Capital Securities may, to the extent permitted by applicable law, institute a legal proceeding directly against any Person to enforce the Property Trustee's rights under the Declaration, without first instituting a legal proceeding against the Property Trustee or any other Person.

Except as provided in this Section, the Holders of Capital Securities will not be able to exercise directly any other remedy available to the holders of the Notes.

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

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

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

6. Voting Rights - Common Securities.

(a) Except as provided under Sections 6(b) and (c), 7(a) and (b) and 8 of this Designation of Terms or as otherwise required by law and the Declaration, the Holders of the Common Securities will have no voting rights.

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

(c) Subject to Section 2.6 of the Declaration and only after the Event of Default with respect to the Capital Securities has been cured, waived, or otherwise eliminated and subject to the requirements of the second to last sentence of this paragraph, the Holders of a Majority in liquidation amount of the Common Securities, voting separately as a class, may direct the time, method, and place of conducting any proceeding for any remedy available to the Property Trustee, or exercising any trust or power conferred upon the Property Trustee under the Declaration, including (i) directing the time, method, place of conducting any proceeding for any

I-7

remedy available to the Note Trustee, or exercising any trust or power conferred on the Note Trustee with respect to the Notes, (ii) waive any past default and its consequences that is waivable under Section 5.01 of the Indenture, or (iii) exercise any right to rescind or annul a declaration that the principal of all the Notes shall be due and payable, provided that, where a consent or action

under the Indenture would require the consent or act of the Holders of a Super Majority, the Property Trustee only may give such consent or take such action at the written direction of the Holders of at least the proportion in liquidation amount of the Common Securities which the relevant Super Majority represents of the aggregate principal amount of the Notes outstanding. Pursuant to this Section 6(c), the Property Trustee shall not revoke any action previously authorized or approved by a vote of the Holders of the Capital Securities. Other than with respect to directing the time, method and place of conducting any remedy available to the Property Trustee or the Note Trustee as set forth above, the Property Trustee shall not take any action in accordance with the directions of the Holders of the Common Securities under this paragraph unless the Property Trustee has obtained an opinion of tax counsel to the effect that for purposes of United States federal income tax the Trust will not be classified as other than a grantor trust on account of such action. If the Property Trustee fails to enforce its rights under the Declaration, any Holder of Common Securities may, to the extent permitted by applicable law, institute a legal proceeding directly against any Person to enforce the Property Trustee's rights under the Declaration, without first instituting a legal proceeding against the Property Trustee or any other Person.

Any approval or direction of Holders of Common Securities may be given at a separate meeting of Holders of Common Securities convened for such purpose,

at a meeting of all of the Holders of Securities in the Trust or pursuant to written consent. The Regular Trustees will cause a notice of any meeting at which Holders of Common Securities are entitled to vote, or of any matter upon which action by written consent of such Holders is to be taken, to be mailed to each Holder of record of Common Securities. Each such notice will include a statement setting forth (i) the date of such meeting or the date by which such action is to be taken, (ii) a description of any resolution proposed for adoption at such meeting on which such Holders are entitled to vote or of such matter upon which written consent is sought and (iii) instructions for the delivery of proxies or consents.

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

7. Amendments to Declaration and Indenture.

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

I-8

however, if any amendment or proposal referred to in clause (i) above would adversely affect only the Capital Securities or only the Common Securities, then only the affected class will be entitled to vote on such amendment or proposal and such amendment or proposal shall not be effective except with the approval of a Majority in liquidation amount of such class of Securities.

(b) In the event the consent of the Property Trustee as the holder of the Notes is required under the Indenture with respect to any amendment, modification or termination of the Indenture or the Notes, the Property Trustee shall request the written direction of the Holders of the Securities with respect to such amendment, modification or termination and shall vote with respect to such amendment, modification or termination as directed by a Majority in liquidation amount of the Securities voting together as a single class; provided, however, that where as a consent under the Indenture would require the

consent of the holders of as a Super Majority, the Property Trustee may only give such consent at the direction of the Holders of at least the proportion in liquidation amount of the Securities which the relevant Super Majority represents of the aggregate principal amount of the Notes outstanding; provided,

further, that the Property Trustee shall not take any action in accordance with

the directions of the Holders of the Securities under this Section 7(b) unless the Property Trustee has obtained an opinion of tax counsel to the effect that for the purposes of United States federal income tax the Trust will not be classified as other than a grantor trust on account of such action.

8. Pro Rata.

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

9. Ranking.

The Capital Securities rank pari passu and payment thereon shall be

made pro rata with the Common Securities except that, where an Event of Default

occurs and is continuing, the rights of Holders of the Common Securities to payment in respect of Distributions and payments upon liquidation, redemption and otherwise are subordinated to the rights to payment of the Holders of the Capital Securities.

10. Listing.

Unless otherwise determined by the Regular Trustees, the Capital Securities shall not be listed for quotation on any stock exchange.

I-9

11. Acceptance of Securities Guarantee and Indenture.

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

12. No Preemptive Rights.

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

13. Miscellaneous.

These terms constitute a part of the Declaration.

The Sponsor will provide a copy of the Declaration and the Capital Securities Guarantee or the Common Securities Guarantee (as may be appropriate), and the Indenture to a Holder without charge on written request to the Sponsor at its principal place of business.

I-10

Dated: _____, [__]

BANK OF AMERICA CORPORATION
as Sponsor

By: _____
[_____] Senior Vice President

Accepted:

BAC Capital Trust [__]

James T. Houghton
Regular Trustee

Karen A. Gosnell
Regular Trustee

I-11

EXHIBIT A-1

FORM OF CAPITAL SECURITY CERTIFICATE

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

Unless this Capital Security is presented by an authorized representative of The Depository Trust Company (55 Water Street, New York, New

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

THIS INSTRUMENT IS NOT A SAVINGS ACCOUNT OR A BANK DEPOSIT, IS NOT AN OBLIGATION OF OR GUARANTEED BY ANY BANKING AFFILIATE OF BANK OF AMERICA CORPORATION AND IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENTAL AGENCY AND INVOLVES INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF PRINCIPAL.

Certificate Number

__-R-_____

CUSIP NO. [_____]

Certificate Evidencing _____ Capital Securities
(aggregate liquidation amount \$[____])

of

BAC CAPITAL TRUST [____]

____% Capital Securities
(liquidation amount \$[____] per Capital Security)

BAC CAPITAL TRUST [____], a statutory business trust formed under the laws of the State of Delaware (the "Trust"), hereby certifies that CEDE & CO. (the "Holder") is the registered owner of _____ Capital Securities of the Trust representing undivided preferred beneficial interests in the assets of the Trust designated the ____% Capital Securities (liquidation amount \$[____] per Capital Security) (the "Capital Securities"). The Capital Securities are transferable on the books and records of the Trust, in person or by a duly authorized attorney,

A1-1

upon surrender of this certificate duly endorsed and in proper form for transfer. The designation, rights, privileges, restrictions, preferences and other terms and provisions of the Capital Securities represented hereby are issued and shall in all respects be subject to the provisions of the Amended and Restated Declaration of Trust of the Trust dated as of [_____, ____], as the same may be amended from time to time (the "Declaration"), including the designation of the terms of the Capital Securities as set forth in Annex I to the Declaration. Capitalized terms used herein but not defined shall have the meaning given them in the Declaration. The Holder is entitled to the benefits of the Capital Securities Guarantee to the extent provided therein. The Declaration permits the Sponsor to dissolve the Trust at any time. The Sponsor will provide a copy of the Declaration, the Capital Securities Guarantee and the Indenture to a Holder without charge upon written request to the Sponsor at its principal place of business.

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

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

IN WITNESS WHEREOF, the Trust has executed this certificate as of [_____, ____].

BAC CAPITAL TRUST [____]

By: _____
Name: Karen A. Gosnell
Title: Regular Trustee

A1-2

[FORM OF REVERSE OF SECURITY]

Distributions payable on each Capital Security will be fixed at a rate per annum of ____% (the "Coupon Rate") of the stated liquidation amount of \$[____] per Capital Security, such rate being the rate of interest payable on the Notes to be held by the Property Trustee on behalf of the Trust. Distributions in arrears for more than one quarter period will bear interest thereon compounded quarterly [semi-annually] at the Coupon Rate (to the extent permitted by applicable law). A Distribution is payable only to the extent that payments are made in respect of the Notes held by the Property Trustee and to the extent the Property Trustee has funds available therefor. The amount of Distributions

payable for any period will be computed on the basis of a 360-day year of twelve 30-day months.

Except as otherwise described below, Distributions on the Capital Securities will be cumulative, will accrue from the date of original issuance and will be payable quarterly [semi-annually] in arrears on [January __, April __, July __ and October __] [January __ and July __] of each year, commencing on [_____, ____] to the person in whose name the Capital Security is registered at the close of business on the regular record date for such installment, which shall be the close of business on the Business Day next preceding such payment date -- IF PURSUANT TO THE TERMS OF THE DECLARATION, THE SECURITIES ARE NO LONGER REPRESENTED BY A GLOBAL SECURITY -- which shall be the close of business on [January 1, April 1, July 1 or October 1] [January 1 and July 1]. The Note Issuer has the right under the Indenture to defer payments of interest by extending the interest payment period from time to time on the Notes for a period not exceeding 20 [10] consecutive quarterly [semi-annual] periods (each an "Extension Period"), provided that no Extension Period shall last

beyond the date of the maturity of the Notes. As a consequence of such deferral, Distributions will also be deferred hereunder for the same period. Despite such deferral, quarterly [semi-annual] Distributions will continue to accrue with interest thereon (to the extent permitted by applicable law) at the Coupon Rate compounded quarterly [semi-annually] during any such Extension Period. Prior to the termination of any such Extension Period, the Note Issuer may further extend such Extension Period; provided that such Extension Period together with all

such previous and further extensions thereof may not exceed 20 [10] consecutive quarterly [semi-annual] periods or extend beyond the maturity date of the Notes. Payments of accrued Distributions will be payable to Holders as they appear on the books and records of the Trust on the first record date after the end of the Extension Period. Upon the termination of any Extension Period and the payment of all amounts then due, the Note Issuer may commence a new Extension Period, subject to the above requirements.

THE CAPITAL SECURITIES SHALL BE REDEEMABLE AS PROVIDED IN THE DECLARATION.

A1-3

ASSIGNMENT

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

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

(Insert address and zip code of assignee)

and irrevocably appoints

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

Date: _____

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

Signature Guarantee*: _____

* Signature must be guaranteed by an "eligible guarantor institution" that is

a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Registrar, which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities and Exchange Act of 1934, as amended.

A1-4

EXHIBIT A-2

FORM OF COMMON SECURITY CERTIFICATE

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), AND ARE "RESTRICTED SECURITIES" AS THAT TERM IS DEFINED IN RULE 144A UNDER THE ACT. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE ACT, THE AVAILABILITY OF WHICH IS TO BE ESTABLISHED TO THE SATISFACTION OF THE TRUST.

THE COMMON SECURITIES REPRESENTED BY THIS CERTIFICATE ARE BENEFICIALLY OWNED BY A PERSON WHO MAY BE AN "AFFILIATE" WITHIN THE MEANING OF RULE 144 UNDER THE ACT. CONSEQUENTLY, THE SECURITIES MAY NOT BE TRANSFERRED UNLESS SUCH TRANSFER IS IN COMPLIANCE WITH SAID RULE OR UNLESS MADE PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT FOR SUCH SECURITIES UNDER THE ACT OR AN OPINION OF COUNSEL FOR THE TRUST THAT REGISTRATION IS NOT REQUIRED UNDER THE ACT.

THIS INSTRUMENT IS NOT A SAVINGS ACCOUNT OR A BANK DEPOSIT, IS NOT AN OBLIGATION OF OR GUARANTEED BY ANY BANKING AFFILIATE OF BANK OF AMERICA CORPORATION AND IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENTAL AGENCY AND INVOLVES INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF PRINCIPAL.

Certificate Number

___-R_____

Certificate Evidencing _____ Common Securities
(aggregate liquidation amount \$[___])

of

BAC CAPITAL TRUST [___]

_____% Common Securities
(liquidation amount \$[___] per Common Security)

BAC CAPITAL TRUST [___], a statutory business trust formed under the laws of the State of Delaware (the "Trust"), hereby certifies that BANK OF AMERICA CORPORATION (the "Holder") is the registered owner of _____ common securities of the Trust representing

A2-1

undivided common beneficial interests in the assets of the Trust designated the ____% Common Securities (liquidation amount \$[___] per Common Security) (the "Common Securities"). The Common Securities are transferable on the books and records of the Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer. The designation, rights, privileges, restrictions, preferences and other terms and provisions of the Common Securities represented hereby are issued and shall in all respects be subject to the provisions of the Amended and Restated Declaration of Trust of the Trust dated as of [_____, ____], as the same may be amended from time to time (the "Declaration"), including the designation of the terms of the Common Securities as set forth in Annex I to the Declaration. Capitalized terms used herein but not defined shall have the meaning given them in the Declaration. The Holder is entitled to the benefits of the Common Securities Guarantee to the extent provided therein. The Declaration permits the Sponsor to dissolve the Trust at any time. The Sponsor will provide a copy of the Declaration, the Common Securities Guarantee and the Indenture to a Holder without charge upon written request to the Sponsor at its principal place of business.

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

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

IN WITNESS WHEREOF, the Trust has executed this certificate as of
[_____, ____].

BAC CAPITAL TRUST [__]

By: _____
Name: Karen A. Gosnell
Title: Regular Trustee

A2-2

[FORM OF REVERSE OF SECURITY]

Distributions payable on each Common Security will be fixed at a rate per annum of ____% (the "Coupon Rate") of the stated liquidation amount of \$[___] per Common Security, such rate being the rate of interest payable on the Notes to be held by the Property Trustee. Distributions in arrears will continue to accumulate at the same rate compounded quarterly [semi-annually]. A Distribution is payable only to the extent that payments are made in respect of the Notes held by the Property Trustee and to the extent the Property Trustee has funds available therefor. The amount of Distributions payable for any period will be computed on the basis of a 360-day year of twelve 30-day months.

Except as otherwise described below, Distributions on the Common Securities will be cumulative, will accrue from the date of original issuance and will be payable quarterly [semi-annually] in arrears on [January __, April __, July __ and October __] [January __ and July __] of each year, commencing on [_____, _____], to Holders of record 15 days prior to such payment dates, which payment dates shall correspond to the interest payment dates on the Notes. The Note Issuer has the right under the Indenture to defer payments of interest by extending the interest payment period from time to time on the Notes for a period not exceeding 20 [10] consecutive quarterly [semi-annual] periods (each an "Extension Period"), provided that no Extension Period shall last beyond the

date of the maturity of the Notes. As a consequence of such deferral, [semi-annual] Distributions will also be deferred hereunder for the same period. Despite such deferral, quarterly [semi-annual] Distributions will continue to accrue with interest thereon (to the extent permitted by applicable law) at the Coupon Rate compounded quarterly [semi-annually] during any such Extension Period. Prior to the termination of any such Extension Period, the Note Issuer may further extend such Extension Period; provided that such Extension Period

together with all such previous and further extensions thereof may not exceed 20 [10] consecutive quarterly [semi-annual] periods or extend beyond the maturity date of the Notes. Payments of accrued Distributions will be payable to Holders as they appear on the books and records of the Trust on the first record date after the end of the Extension Period. Upon the termination of any Extension Period and the payment of all amounts then due, the Note Issuer may commence a new Extension Period, subject to the above requirements.

THE COMMON SECURITIES SHALL BE REDEEMABLE AS PROVIDED IN THE DECLARATION.

A2-3

ASSIGNMENT

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

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

(Insert address and zip code of assignee)

and irrevocably appoints _____

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

Date: _____

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

Signature Guarantee/1/: _____

/1/ Signature must be guaranteed by an "eligible guarantor institution" that is a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Registrar, which requirements include membership or participation in the Securities Transfer Agents medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities and Exchange Act of 1934, as amended.

BANK OF AMERICA CORPORATION

RESTATED INDENTURE

Dated as of November 1, 2001

THE BANK OF NEW YORK
as Trustee

JUNIOR SUBORDINATED DEBT SECURITIES

TIE-SHEET

of provisions of Trust Indenture Act of 1939 with Indenture dated as of November 1, 2001 between Bank of America Corporation and The Bank of New York, as Trustee:

<TABLE>
<CAPTION>

ACT SECTION <S>	INDENTURE SECTION <C>
310 (a) (1)	6.09
(a) (2)	6.09
310 (a) (3)	N.A.
(a) (4)	N.A.
310 (b)	6.08; 6.10 (a) (b) and (d)
310 (c)	N.A.
311 (a) and (b)	6.13
311 (c)	N.A.
312 (a)	4.01; 4.02 (a)
312 (b) and (c)	4.02 (b) and (c)
313 (a)	4.04 (a)
313 (b) (1)	N.A.
313 (b) (2)	N.A.
313 (c)	N.A.
313 (d)	4.04 (b)
314 (a)	4.03
314 (b)	N.A.
314 (c) (1) and (2)	13.06
314 (c) (3)	N.A.
314 (d)	N.A.
314 (e)	13.06
314 (f)	N.A.
315 (a) (c) and (d)	6.01
315 (b)	5.08
315 (e)	5.09
316 (a) (1)	5.01; 5.07
316 (a) (2)	Omitted
316 (a) last sentence	7.04
316 (b)	5.04
317 (a)	5.02
317 (b)	3.04 (a)
318 (a)	13.08

</TABLE>

THIS TIE-SHEET IS NOT PART OF THE INDENTURE AS EXECUTED.

TABLE OF CONTENTS

<TABLE>

<CAPTION>

ARTICLE 1
DEFINITIONS

<S>		<C>
SECTION 1.01.	Definitions	1

ARTICLE 2
SECURITIES

SECTION 2.01.	Forms Generally	8
SECTION 2.02.	Form of Trustee's Certificate of Authentication	8
SECTION 2.03.	Amount Unlimited; Issuable in Series	8
SECTION 2.04.	Authentication and Dating	10
SECTION 2.05.	Date and Denomination of Securities	12
SECTION 2.06.	Execution of Securities	13
SECTION 2.07.	Exchange and Registration of Transfer of Securities	14
SECTION 2.08.	Mutilated, Destroyed, Lost or Stolen Securities	15
SECTION 2.09.	Temporary Securities	15
SECTION 2.10.	Cancellation of Securities Paid, etc	16
SECTION 2.11.	Global Securities	16
SECTION 2.12.	CUSIP Numbers	17
SECTION 2.13.	Extension of Interest Payment Period	18

ARTICLE 3
PARTICULAR COVENANTS OF THE COMPANY

SECTION 3.01.	Payment of Principal, Premium and Interest	19
SECTION 3.02.	Offices for Notices and Payments, etc	19
SECTION 3.03.	Appointments to Fill Vacancies in Trustee's Office	20
SECTION 3.04.	Provision as to Paying Agent	20
SECTION 3.05.	Certificate to Trustee	21
SECTION 3.06.	Compliance with Consolidation Provisions	21
SECTION 3.07.	Limitation on Dividends	21
SECTION 3.08.	Covenants as to Trusts	22
SECTION 3.09.	Calculation of Original Issue Discount	22

ARTICLE 4
SECURITYHOLDERS' LISTS AND REPORTS BY THE COMPANY AND THE TRUSTEE

SECTION 4.01.	Securityholders' Lists	22
SECTION 4.02.	Preservation and Disclosure of Lists	23
SECTION 4.03.	Reports by Company	24
SECTION 4.04.	Reports by the Trustee	24

ARTICLE 5
REMEDIES OF THE TRUSTEE AND SECURITYHOLDERS

SECTION 5.01.	Events of Default	25
SECTION 5.02.	Payment of Securities on Default; Suit Therefor	26
SECTION 5.03.	Application of Moneys Collected by Trustee	29
SECTION 5.04.	Proceedings by Securityholders	29
SECTION 5.05.	Proceedings by Trustee	30

</TABLE>

TABLE OF CONTENTS

<TABLE>		<C>
<S>		
SECTION 5.06.	Remedies Cumulative and Continuing	30
SECTION 5.07.	Direction of Proceedings and Waiver of Defaults by Majority of Securityholders	30
SECTION 5.08.	Notice of Defaults and Nonpayments	31
SECTION 5.09.	Undertaking to Pay Costs	32

ARTICLE 6
CONCERNING THE TRUSTEE

SECTION 6.01.	Duties and Responsibilities of Trustee	32
SECTION 6.02.	Reliance on Documents, Opinions, etc	33
SECTION 6.03.	No Responsibility for Recitals, etc	34
SECTION 6.04.	Trustee, Authenticating Agent, Paying Agents, Transfer Agents or Registrar May Own Securities	35
SECTION 6.05.	Moneys to be Held in Trust	35
SECTION 6.06.	Compensation and Expenses of Trustee	35
SECTION 6.07.	Officers' Certificate as Evidence	36
SECTION 6.08.	Conflicting Interest of Trustee	36
SECTION 6.09.	Eligibility of Trustee	36
SECTION 6.10.	Resignation or Removal of Trustee	36
SECTION 6.11.	Acceptance by Successor Trustee	38
SECTION 6.12.	Succession by Merger, etc	39
SECTION 6.13.	Limitation on Rights of Trustee as a Creditor	39
SECTION 6.14.	Authenticating Agents	39

ARTICLE 7
CONCERNING THE SECURITYHOLDERS

SECTION 7.01.	Action by Securityholders	41
SECTION 7.02.	Proof of Execution by Securityholders	41
SECTION 7.03.	Who Are Deemed Absolute Owners	42
SECTION 7.04.	Securities Owned by Company Deemed Not Outstanding	42
SECTION 7.05.	Revocation of Consents; Future Holders Bound	42

ARTICLE 8
SECURITYHOLDERS' MEETINGS

SECTION 8.01.	Purposes of Meetings	43
SECTION 8.02.	Call of Meetings by Trustee	43
SECTION 8.03.	Call of Meetings by Company or Securityholders	43
SECTION 8.04.	Qualifications for Voting	44
SECTION 8.05.	Regulations	44
SECTION 8.06.	Voting	44

ARTICLE 9
SUPPLEMENTAL INDENTURES

SECTION 9.01.	Supplemental Indentures without Consent of Securityholders	45
SECTION 9.02.	Supplemental Indentures with Consent of Securityholders	47
SECTION 9.03.	Compliance with Trust Indenture Act; Effect of Supplemental Indentures ...	48

</TABLE>

ii

TABLE OF CONTENTS

<TABLE>		
<S>		<C>
SECTION 9.04.	Notation on Securities	48
SECTION 9.05.	Evidence of Compliance of Supplemental Indenture to be Furnished Trustee	48

ARTICLE 10
CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE

SECTION 10.01.	Company May Consolidate, etc., on Certain Terms	49
SECTION 10.02.	Successor Corporation to be Substituted for Company	49
SECTION 10.03.	Opinion of Counsel to be Given Trustee	50

ARTICLE 11
SATISFACTION AND DISCHARGE OF INDENTURE; DEFEASANCE

SECTION 11.01.	Discharge of Indenture	50
SECTION 11.02.	Deposited Moneys and U.S. Government Obligations to be Held in Trust by Trustee	50
SECTION 11.03.	Paying Agent to Repay Moneys Held	51
SECTION 11.04.	Return of Unclaimed Moneys	51
SECTION 11.05.	Defeasance and Discharge Upon Deposit of Moneys or U.S. Government Obligations	51

ARTICLE 12
IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

SECTION 12.01.	Indenture and Securities Solely Corporate Obligations	53
----------------	---	----

ARTICLE 13
MISCELLANEOUS PROVISIONS

SECTION 13.01.	Successors	53
SECTION 13.02.	Official Acts by Successor Corporation	53
SECTION 13.03.	Surrender of Company Powers	53
SECTION 13.04.	Addresses for Notices, etc	54
SECTION 13.05.	Governing Law	54
SECTION 13.06.	Evidence of Compliance with Conditions Precedent	54
SECTION 13.07.	Legal Holidays	54
SECTION 13.08.	Trust Indenture Act to Control	55
SECTION 13.09.	Table of Contents, Headings, etc	55
SECTION 13.10.	Execution in Counterparts	55
SECTION 13.11.	Separability	55
SECTION 13.12.	Assignment	55
SECTION 13.13.	Acknowledgment of Rights	55

ARTICLE 14
REDEMPTION OF SECURITIES

SECTION 14.01.	Applicability of Article	56
SECTION 14.02.	Notice of Redemption; Selection of Securities	56
SECTION 14.03.	Payment of Securities Called for Redemption	57

</TABLE>

TABLE OF CONTENTS

<TABLE>

ARTICLE 15
SUBORDINATION OF SECURITIES

<S>		<C>
SECTION 15.01.	Agreement to Subordinate	57
SECTION 15.02.	Default on Senior Obligations	58
SECTION 15.03.	Liquidation; Dissolution; Bankruptcy	58
SECTION 15.04.	Subrogation	59
SECTION 15.05.	Trustee to Effectuate Subordination	60
SECTION 15.06.	Notice by the Company	60
SECTION 15.07.	Rights of the Trustee; Holders of Senior Obligations	61
SECTION 15.08.	Subordination May Not Be Impaired	61
</TABLE>		

THIS RESTATED INDENTURE, dated as of November 1, 2001, between BANK OF AMERICA CORPORATION, a Delaware corporation (the "Company"), and THE BANK OF NEW YORK, a New York banking corporation, as trustee (the "Trustee"),

W I T N E S S E T H:

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the issue from time to time of its subordinated unsecured debentures, notes or other evidence of indebtedness to be issued in one or more series (the "Securities") up to such principal amount or amounts as may from time to time be authorized by the Company and, to provide the terms and conditions upon which the Securities are to be authenticated, issued and delivered, the Company has duly authorized the execution of this Indenture; and

WHEREAS, in connection with the proposed issuance of the Securities, the Company and the Trustee entered into that certain Indenture dated as of October 1, 2001 (the "Original Indenture"); and

WHEREAS, the Company has not yet issued any Securities under the Original Indenture and the Company and the Trustee now desire to make certain changes and additions to the Original Indenture by restating the Original Indenture in its entirety; and

WHEREAS, the Company has duly authorized the execution of this Indenture; and

WHEREAS, all acts and things necessary to make this Indenture a valid agreement according to its terms, have been done and performed;

NOW, THEREFORE:

In consideration of the premises, and the purchase of the Securities by the holders thereof, the Company covenants and agrees with the Trustee for the equal and proportionate benefit of the respective holders from time to time of the Securities or of a series thereof, as follows:

ARTICLE 1

DEFINITIONS

SECTION 1.01. Definitions.

The terms defined in this Section 1.01 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01. All other terms used in this Indenture which are defined in the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act"), or which are by reference therein defined in the Securities Act of 1933, as amended (the "Securities Act"), shall (except as herein otherwise expressly provided or unless the context otherwise requires) have the meanings assigned to such terms in the Trust Indenture Act and in the Securities Act as in force at the date of this Indenture as originally executed. All accounting terms used herein and not expressly defined shall have the meanings

assigned to such terms in accordance with generally accepted accounting principles and the term "generally accepted accounting principles" means such accounting principles as are generally accepted at the time of any computation.

The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

"Affiliate" means, with respect to a specified Person, (a) any Person directly or indirectly owning, controlling or holding with power to vote 10% or more of the outstanding voting securities or other ownership interests of the specified Person, (b) any Person 10% or more of whose outstanding voting securities or other ownership interests are directly or indirectly owned, controlled or held with power to vote by the specified Person, (c) any Person directly or indirectly controlling, controlled by, or under common control with the specified Person, (d) a partnership in which the specified Person is a general partner, (e) any officer or director of the specified Person, and (f) if the specified Person is an individual, any entity of which the specified Person is an officer, director or general partner.

"Authenticating Agent" shall mean any agent or agents of the Trustee which at the time shall be appointed and acting pursuant to Section 6.14.

"Bankruptcy Law" shall mean Title 11, U.S. Code, or any similar federal or state law for the relief of debtors.

"Board of Directors" shall mean the Board of Directors or the Executive Committee or any other duly authorized designated officers of the Company.

"Board Resolution" shall mean a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors or by a committee acting under authority of or appointment by the Board of Directors and to be in full force and effect on the date of such certification.

"Business Day" shall mean, with respect to any series of Securities, any day other than a day on which federal or state banking institutions in New York, New York, or Charlotte, North Carolina, are authorized or obligated by law, executive order or regulation to close.

"Capital Securities" shall mean undivided preferred beneficial interests in the assets of a Trust having the liquidation value specified in a supplemental indenture.

"Capital Securities Guarantee" shall mean any guarantee that the Company may enter into with the Trustee or other Persons that operate directly or indirectly for the benefit of holders of Capital Securities of a Trust.

"Certificate" shall mean a certificate signed by the Chief Executive Officer, President, Chief Financial Officer, any Vice President, Treasurer, Assistant Treasurer or Associate General Counsel of the Company (each, an "Authorized Officer").

"Commission" shall mean the Securities and Exchange Commission.

2

"Common Securities" shall mean undivided common beneficial interests in the assets of a Trust having the liquidation value specified in a supplemental indenture.

"Common Securities Guarantee" shall mean any guarantee that the Company may enter into with any Person or Persons that operates directly or indirectly for the benefit of holders of Common Securities of a particular Trust.

"Company" shall mean Bank of America Corporation, a Delaware corporation, and, subject to the provisions of Article 10, shall include its successors and assigns.

"Company Common Stock" shall mean the Common Stock of the Company or any other class of stock resulting from changes or reclassifications of such Common Stock consisting solely of changes in par value, or from par value to no par value, or from no par value to par value. Subject to the anti-dilution provisions of any convertible Security, however, shares of Company Common Stock issuable on conversion of a Security shall include only shares of the class designated as Common Stock of the Company at the date of the supplemental indenture, Board Resolution or other instrument authorizing such Security or shares of any class or classes resulting from any reclassification or reclassifications thereof and which have no preference in respect of the payment of dividends or the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding-up of the Company and which are not subject to redemption by the Company, provided that if at any time there shall be more than one such resulting class, the shares of each such class then so issuable shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of such classes resulting from all such reclassifications.

"Compounded Interest" shall have the meaning set forth in Section 2.13.

"Custodian" shall mean any receiver, trustee, assignee, liquidator, or similar official under any Bankruptcy Law.

"Declaration", with respect to a specific Trust, shall mean the Amended and Restated Declaration of Trust of that Trust or the equivalent governing instrument of a Trust.

"Default" means any event, act or condition that with notice or lapse of time, or both, would constitute an Event of Default.

"Deferred Interest" shall have the meaning set forth in Section 2.13.

"Depository" shall mean, with respect to Securities of any series, for which the Company shall determine that such Securities will be issued as a Global Security, The Depository Trust Company, New York, New York, another clearing agency, or any successor registered as a clearing agency pursuant to Section 17A of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or other applicable statute or regulation, which, in each case, shall be designated by the Company pursuant to either Section 2.04 or 2.11.

"Event of Default" shall mean any event specified in Section 5.01, continued for the period of time, if any, and after the giving of the notice, if any, therein designated.

3

"Extended Interest Payment Period" shall have the meaning set forth in Section 2.13.

"Global Security" means, with respect to any series of Securities, a Security executed by the Company and delivered by the Trustee to the Depository or pursuant to the Depository's instruction, all in accordance with the Indenture, which shall be registered in the name of the Depository or its nominee.

"Indenture" shall mean this instrument as originally executed or, if amended or supplemented as herein provided, as so amended or supplemented, or both, and shall include the form and terms of particular series of Securities established as contemplated hereunder.

"Interest" shall mean, when used with respect to non-interest bearing Securities, interest payable after maturity.

"Interest Payment Date", when used with respect to any installment of interest on a Security of a particular series, shall mean the date specified in such Security or in a Board Resolution or in an indenture supplemental hereto with respect to such series as the fixed date on which an installment of interest with respect to Securities of that series is due and payable.

"Maturity Date" shall mean the date on which any Securities mature and on which the principal shall be due and payable together with all accrued and unpaid interest thereon.

"Mortgage" shall mean and include any mortgage, pledge, lien, security interest, conditional sale or other title retention agreement or other similar encumbrance.

"Nonpayment" shall have the meaning set forth in Section 5.08.

"Officers' Certificate" shall mean a certificate signed by an Authorized Officer and delivered to the Trustee. Each such certificate shall include the statements provided for in Section 13.06 if and to the extent provided by the provisions of such Section.

"Opinion of Counsel" shall mean an opinion in writing signed by legal counsel, who may be an employee of or counsel to the Company, or may be other counsel satisfactory to the Trustee.

"Original Issue Date" of any Security (or any portion thereof) shall mean the earlier of (a) the date of such Security or (b) the date of any Security (or portion thereof) for which such Security was issued (directly or indirectly) on registration of transfer, exchange or substitution of the first such Security.

"Original Issue Discount Security" shall mean any Security which provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the maturity thereof pursuant to Section 5.01.

The term "outstanding", when used with reference to Securities, shall, subject to the provisions of Section 7.04, mean, as of any particular time, all Securities authenticated and delivered by the Trustee or the Authenticating Agent under this Indenture, except

- (a) Securities theretofore canceled by the Trustee or the Authenticating Agent or delivered to the Trustee for cancellation;
- (b) Securities, or portions thereof, for the payment or redemption of which moneys in the necessary amount shall have been deposited in trust with the Trustee or with any paying agent (other than the Company) or shall have been set aside and segregated in trust by the Company (if the Company shall act as its own paying agent); provided that, if such Securities, or portions thereof, are to be redeemed prior to maturity thereof, notice of such redemption shall have been given as provided in Article 14 or provision satisfactory to the Trustee shall have been made for giving such notice; and
- (c) Securities paid pursuant to Section 2.08 or in lieu of or in substitution for which other Securities shall have been authenticated and delivered pursuant to the terms of Section 2.08 unless proof satisfactory to the Company and the Trustee is presented that any such Securities are held by bona fide holders in due course.

In determining whether the holders of the requisite principal amount of outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, the principal amount of an Original Issue Discount Security that shall be deemed to be outstanding for such purposes shall be the amount of the principal thereof that would be due and payable as of the date of such determination upon a declaration of acceleration of the maturity thereof pursuant to Section 5.01.

"Person" shall mean any individual, corporation, estate, partnership, joint venture, association, joint stock company, limited liability company, trust, unincorporated association or government or any agency or political subdivision thereof.

"Predecessor Security" of any particular Security means every previous Security evidencing all or a portion of the same debt and as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 2.08 in lieu of a lost, destroyed or stolen Security shall be deemed to evidence the same debt as the lost, destroyed or stolen Security.

"Principal Office of the Trustee", or other similar term, shall mean the principal office of the Trustee, at which at any particular time its corporate trust business shall be administered.

"Property Trustee" has the meaning set forth in the Declaration of the applicable Trust.

"Responsible Officer", when used with respect to the Trustee, shall mean the chairman and vice chairman of the board of directors, the chairman or vice chairman of the executive committee of the board of directors, the president, any vice president, any assistant vice president, the cashier, any assistant cashier, the secretary, any assistant secretary, the treasurer, any assistant treasurer, any senior trust officer, any trust officer, the controller, any assistant controller or any other officer or assistant officer of the Trustee customarily performing functions similar to those performed by the persons who at the time shall be such officers,

respectively, or to whom any corporate trust matter is referred because of his knowledge of and familiarity with the particular subject.

"Security" or "Securities" shall have the meaning stated in the first recital of this Indenture and more particularly means any and all debentures, notes or other evidence of indebtedness authenticated and delivered under this Indenture.

"Securityholder", "holder of Securities", or other similar terms, shall mean any person in whose name at the time a particular Security is registered on the register kept by the Company or the Trustee for that purpose in accordance with the terms hereof.

"Senior Obligations" means, with respect to the Company, (i) the principal, premium, if any, and interest in respect of (A) indebtedness of such obligor for money borrowed or purchased and similar obligations (whether or not

denominated as senior or subordinated), and (B) indebtedness evidenced by securities, debentures, bonds or other similar instruments (whether or not denominated as senior or subordinated) issued by such obligor; (ii) all capital lease obligations of such obligor; (iii) all obligations of such obligor issued or assumed as the deferred purchase price of property, all conditional sale obligations of such obligor and all obligations of such obligor under any title retention agreement (but excluding trade accounts payable arising in the ordinary course of business); (iv) all obligations of such obligor for the reimbursement on any letter of credit, banker's acceptance or similar credit transaction; (v) all obligations of the Company arising from off-balance sheet guarantees by the Company and direct credit substitutes and obligations of the Company associated with derivative products such as interest and foreign exchange rate contracts, commodity contracts, swap agreements (including interest rate and foreign exchange swap agreements), cap agreements, floor agreements, collar agreements, interest rate agreements, foreign exchange rate agreements, options, commodity futures contracts and commodity option contracts; (vi) all obligations and financial instruments of the type referred to in clauses (i) through (v) of other Persons for the payment of which such obligor is responsible or liable as obligor, guarantor or otherwise; and (vii) all obligations of the type referred to in clauses (i) through (vi) of other Persons secured by any lien on any property or asset of such obligor (whether or not such obligation is assumed by such obligor), except for (1) any such indebtedness that is by its terms subordinated to or pari passu with the Securities, and (2) any indebtedness between or among such obligor and its Affiliates, including all other debt securities and guarantees in respect of those debt securities, which is issued to (x) any Trust or trustee for such Trust, or (y) any other trust, or a trustee of such trust, partnership or other entity affiliated with the Company or its predecessor entities which is a financing vehicle of the Company or its predecessor entities (a "Financing Entity") in connection with the issuance by such Financing Entity of preferred securities or other securities that rank equally with, or junior to, the Capital Securities.

"Subsidiary" shall mean with respect to any Person, (i) any corporation at least a majority of whose outstanding voting stock of which is owned, directly or indirectly, by such Person or by one or more of its Subsidiaries, or by such Person and one or more of its Subsidiaries, (ii) any general partnership, joint venture or similar entity, at least a majority of whose outstanding partnership or similar interests shall at the time be owned by such Person, or by one or more of its Subsidiaries, or by such Person and one or more of its Subsidiaries and (iii) any limited partnership of which such Person or any of its Subsidiaries is a general partner. For the purposes

6

of this definition, "voting stock" means shares, interests, participations or other equivalents in the equity interest (however designated) in such Person having ordinary voting power for the election of a majority of the directors (or the equivalent) of such Person, other than shares, interests, participations or other equivalents having such power only by reason of the occurrence of a contingency.

"Trust" shall mean each of the BAC Capital Trust I, BAC Capital Trust II, BAC Capital Trust III and BAC Capital Trust IV, each a Delaware business trust, as well as any other similar trust created for the purpose of issuing Trust Securities in connection with the issuance of Securities under this Indenture.

"Trust Indenture Act" shall mean the Trust Indenture Act of 1939 as in force at the date of execution of this Indenture, except as provided in Section 9.03.

"Trust Securities" shall mean the Common Securities and the Capital Securities of a Trust or any equivalent security issued by a Trust.

"Trustee" shall mean The Bank of New York, and, subject to the provisions of Article 6 hereof, shall also include its successors and assigns as Trustee hereunder. The term "Trustee" as used with respect to a particular series of the Securities shall mean the trustee with respect to that series.

"U.S. Government Obligations" shall mean securities that are (i) direct obligations of the United States of America for the payment of which its full faith and credit is pledged or (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case under clauses (i) or (ii) are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such U.S. Government Obligation or a specific payment of interest on or principal of any such U.S. Government Obligation held by such custodian for the account of the holder of a depository receipt, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the

U.S. Government Obligation or the specific payment of interest on or principal of the U.S. Government Obligation evidenced by such depository receipt.

"Vice President" when used with respect to the Company or the Trustee shall mean any vice president, whether or not designated by a number or word or words added before or after the title "vice president," including any Executive or Senior Vice President.

"Yield to Maturity" shall mean the yield to maturity on a series of Securities, calculated at the time of issuance of such series of Securities, or if applicable, at the most recent redetermination of interest on such series and calculated in accordance with accepted financial practice.

7

ARTICLE 2

SECURITIES

SECTION 2.01. Forms Generally.

The Securities of each series shall be in substantially the form as shall be authorized by or pursuant to (1) a Board Resolution and as set forth in an Officers' Certificate of the Company or (2) one or more indentures supplemental hereto, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with any law or with any rules made pursuant thereto or with any rules of any securities exchange or all as may, consistently herewith, be determined by the officers executing such Securities, as evidenced by their execution of the Securities.

In the event the Securities are issued in definitive form pursuant to this Indenture, such Securities shall be typewritten, printed, lithographed or engraved on steel engraved borders or may be produced in any other manner, all as determined by the officers executing such Securities, as evidenced by their execution of such Securities.

SECTION 2.02. Form of Trustee's Certificate of Authentication.

The Trustee's certificate of authentication on all Securities shall be in substantially the following form:

This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

The Bank of New York
as Trustee

By _____
Authorized Signatory

SECTION 2.03. Amount Unlimited; Issuable in Series.

The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture or otherwise by the Company is unlimited.

The Securities may be issued in one or more series up to the aggregate principal amount of securities of that series from time to time authorized by or pursuant to a Board Resolution of the Company or pursuant to one or more indentures supplemental hereto. Prior to the initial issuance of Securities of any series, there shall be established in or pursuant to a Board Resolution of the Company and set forth in an Officers' Certificate of the Company or established in one or more indentures supplemental hereto:

8

- (1) the title of the Securities of the series (which shall distinguish the Securities of the series from all other Securities);
- (2) any limit upon the aggregate principal amount of the Securities of the series which may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the series pursuant to Section 2.07, 2.08, 2.09 or 14.03);
- (3) the date or dates on which the principal of and premium, if any, on the Securities of the series is payable;
- (4) the rate or rates at which the Securities of the series shall

bear interest, if any, or the method by which such interest may be determined; whether the interest rate is fixed or floating; the interest payment period (whether quarterly, semi-annual or otherwise); the date or dates from which such interest shall accrue, the Interest Payment Dates on which such interest shall be payable or the manner of determination of such Interest Payment Dates and the record dates for the determination of holders to whom interest is payable on any such Interest Payment Dates;

- (5) the place or places where the principal of, and premium, if any, and any interest on Securities of the series shall be payable;
- (6) the right, if any, to extend the interest payment periods and the duration of such extension;
- (7) the price or prices at which, the period or periods within which and the terms and conditions upon which Securities of the series may be redeemed, in whole or in part, at the option of the Company, pursuant to any sinking fund or otherwise;
- (8) the obligation, if any, of the Company to redeem, purchase or repay Securities of the series at the option of a Securityholder thereof and the price or prices at which and the period or periods within which, and the terms and conditions upon which Securities of the series shall be redeemed, purchased or repaid, in whole or in part, pursuant to such obligation;
- (9) if other than in denominations of \$25 and any integral multiple thereof, the denominations in which Securities of the series shall be issuable;
- (10) if other than the principal amount thereof, the portion of the principal amount of Securities of the series which shall be payable upon declaration of acceleration of the maturity thereof pursuant to Section 5.01 or provable in bankruptcy pursuant to Section 5.02;

9

- (11) any Events of Default with respect to the Securities of a particular series, if not set forth herein;
- (12) the form of the Securities of the series including the form of the Certificate of Authentication of such series;
- (13) any trustee, authenticating or paying agents, warrant agents, transfer agents or registrars with respect to the Securities of such series;
- (14) whether the Securities of the series shall be issued in whole or in part in the form of one or more Global Securities and, in such case, the Depositary for such Global Security or Securities, and whether beneficial owners of interests in any such Global Securities may exchange such interests for other Securities of such series in the manner provided in Section 2.07, and the manner and the circumstances under which and the place or places where any such exchanges may occur if other than in the manner provided in Section 2.07, and any other terms of the series relating to the global nature of the Global Securities of such series and the exchange, registration or transfer thereof and the payment of any principal thereof, or interest or premium, if any, thereon;
- (15) any right of the Company to shorten or extend the Maturity Date of the Securities of such series, as well as the method for determining a Maturity Date;
- (16) any subordination terms of the Securities of a series which may be different from those contained in Article 15; and
- (17) any other terms of the series (which terms shall not be inconsistent with the provisions of this Indenture).

All Securities of any one series shall be substantially identical except as to denomination and except as may otherwise be provided in or pursuant to such Board Resolution or in any such indenture supplemental hereto.

If any of the terms of the series are established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Officers'

Certificate of the Company setting forth the terms of the series.

SECTION 2.04. Authentication and Dating.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any series executed by the Company to the Trustee for authentication, and the Trustee shall thereupon authenticate and make available for delivery said Securities to or upon the written order of the Company, signed by any Authorized Officer, without any further action by the Company hereunder. In authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities, the

10

Trustee shall be entitled to receive, and (subject to Section 6.01) shall be fully protected in relying upon:

- (1) a copy of any Board Resolution or Resolutions relating thereto and, if applicable, an appropriate record of any action taken pursuant to such resolution, in each case certified by the Secretary or an Assistant Secretary of the Company;
- (2) an executed supplemental indenture, if any;
- (3) an Officers' Certificate setting forth the form and terms of the Securities as required pursuant to Sections 2.01 and 2.03, respectively; and
- (4) an Opinion of Counsel which shall also state:
 - (a) that the form of such Securities has been established by or pursuant to a Board Resolution or by a supplemental indenture as permitted by Section 2.01 in conformity with the provisions of this Indenture;
 - (b) that the terms of such Securities have been established by or pursuant to a Board Resolution or by a supplemental indenture as permitted by Section 2.03 in conformity with the provisions of this Indenture;
 - (c) that such Securities, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and legally binding obligations of the Company;
 - (d) that all laws and requirements in respect of the execution and delivery by the Company of the Securities have been complied with in all material respects and that authentication and delivery of the Securities by the Trustee will not violate the terms of the Indenture; and
 - (e) such other matters as the Trustee may reasonably request.

The Trustee shall have the right to decline to authenticate and deliver any Securities under this Section if the Trustee, being advised by counsel, determines that such action may not lawfully be taken or if the Trustee in good faith by its board of directors or trustees, executive committee, or a trust committee of directors or trustees and/or vice presidents shall determine that such action would expose the Trustee to personal liability to existing holders.

11

SECTION 2.05. Date and Denomination of Securities.

The Securities shall be issuable as registered Securities without coupons and in such denominations as shall be specified or established under Section 2.03. In the absence of any such specification pursuant to Section 2.03 with respect to the Securities of any series, the Securities of a series shall be issuable in the denominations of \$25 and any multiple thereof. The Securities shall be numbered, lettered, or otherwise distinguished in such manner or in accordance with such plans as the officers of the Company executing the same may determine with the approval of the Trustee as evidenced by the execution and authentication thereof.

Every Security shall be dated the date of its authentication, shall bear interest, if any, from such date and shall be payable on such dates, in each case, as contemplated by Section 2.03. The interest installment on any Security that is payable, and is punctually paid or duly provided for, on any Interest Payment Date for Securities of that series shall be paid to the Person

in whose name said Security (or one or more Predecessor Securities) is registered at the close of business on the regular record date for such interest installment. In the event that any Security of a particular series or portion thereof is called for redemption and the redemption date is subsequent to a regular record date with respect to any Interest Payment Date and prior to such Interest Payment Date, interest on such Security will be paid upon presentation and surrender of such Security as provided in Section 3.02.

Any interest on any Security that is payable, but is not punctually paid or duly provided for, on any Interest Payment Date for Security of the same series (herein called "Defaulted Interest") shall forthwith cease to be payable to the registered holder on the relevant regular record date by virtue of having been such holder; and such Defaulted Interest shall be paid by the Company, at its election, as provided in clause (1) or clause (2) below:

(1) The Company may make payment of any Defaulted Interest on Securities to the Persons in whose names such Securities (or their respective Predecessor Securities) are registered at the close of business on a special record date for the payment of such Defaulted Interest, which shall be fixed in the following manner: the Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each such Security and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Trustee shall fix a special record date for the payment of such Defaulted Interest which shall not be more than 15 nor less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such special record date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the special record date therefor to be mailed, first class postage prepaid, to each Securityholder at his or her address as it appears in the Security Register (as hereinafter defined), not less than 10 days prior to such special record date. Notice of the proposed payment of such Defaulted Interest and the special record date therefor

12

having been mailed as aforesaid, such Defaulted Interest shall be paid to the Persons in whose names such Securities (or their respective Predecessor Securities) are registered on such special record date and shall be no longer payable pursuant to the following clause (2).

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

Unless otherwise set forth in a Board Resolution or one or more indentures supplemental hereto establishing the terms of any series of Securities pursuant to Section 2.01 hereof, the term "regular record date" as used in this Section with respect to a series of Securities with respect to any Interest Payment Date for such series shall mean either the fifteenth day of the month immediately preceding the month in which an Interest Payment Date established for such series pursuant to Section 2.01 hereof shall occur, if such Interest Payment Date is the first day of a month, or the last day of the month immediately preceding the month in which an Interest Payment Date established for such series pursuant to Section 2.01 hereof shall occur, if such Interest Payment Date is the fifteenth day of a month, whether or not such date is a Business Day.

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

SECTION 2.06. Execution of Securities.

The Securities shall be signed in the name and on behalf of the Company by the manual or facsimile signature of its Chief Executive Officer, President or one of its Vice-Presidents and, at the option of the Company, may be attested by the manual or facsimile signature of its Secretary or one of its Assistant Secretaries, under its corporate seal which may be affixed thereto or printed, engraved or otherwise reproduced thereon, by facsimile or otherwise, and which need not be attested. Only such Securities as shall bear thereon a certificate of authentication substantially in the form hereinbefore recited, executed by

the Trustee or the Authenticating Agent, shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee or the Authenticating Agent upon any Security executed by the Company shall be conclusive evidence that the Security so authenticated has been duly authenticated and delivered hereunder and that the holder is entitled to the benefits of this Indenture.

In case any officer of the Company who shall have signed any of the Securities shall cease to be such officer before the Securities so signed shall have been authenticated and delivered by the Trustee or the Authenticating Agent, or disposed of by the Company, such Securities nevertheless may be authenticated and delivered or disposed of as though the person

13

who signed such Securities had not ceased to be such officer of the Company; and any Security may be signed on behalf of the Company by such persons as, at the actual date of the execution of such Security, shall be the proper officers of the Company, although at the date of the execution of this Indenture any such person was not such an officer.

SECTION 2.07. Exchange and Registration of Transfer of Securities.

Subject to Section 2.05, Securities of any series may be exchanged for a like aggregate principal amount of Securities of the same series of other authorized denominations. Securities to be exchanged may be surrendered at the principal corporate trust office of the Trustee or at any office or agency to be maintained by the Company for such purpose as provided in Section 3.02, and the Company or the Trustee shall execute and register and the Trustee or the Authenticating Agent shall authenticate and make available for delivery in exchange therefor the Security or Securities which the Securityholder making the exchange shall be entitled to receive. Upon due presentment for registration of transfer of any Security of any series at the principal corporate trust office of the Trustee or at any office or agency of the Company maintained for such purpose as provided in Section 3.02, the Company or the Trustee shall execute and register and the Trustee or the Authenticating Agent shall authenticate and make available for delivery in the name of the transferee or transferees a new Security or Securities of the same series for a like aggregate principal amount. Registration or registration of transfer of any Security by the Trustee or by any agent of the Company appointed pursuant to Section 3.02, and delivery of such Security, shall be deemed to complete the registration or registration of transfer of such Security.

The Company or the Trustee shall keep, at the Principal Office of the Trustee, a register for each series of Securities issued hereunder in which, subject to such reasonable regulations as it may prescribe, the Company or the Trustee shall register all Securities and shall register the transfer of all Securities as in this Article 2 provided. Such register shall be in written form or in any other form capable of being converted into written form within a reasonable time.

All Securities presented for registration of transfer or for exchange or payment shall (if so required by the Company or the Trustee or the Authenticating Agent) be duly endorsed by, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company and the Trustee or the Authenticating Agent duly executed by, the holder or his attorney duly authorized in writing.

No service charge shall be made for any exchange or registration of transfer of Securities, but the Company or the Trustee may require payment of a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in connection therewith.

The Company or the Trustee shall not be required to exchange or register a transfer of (a) any Security for a period of 15 days next preceding the date of selection of Securities of such series for redemption, or (b) any Securities of any series selected, called or being called for redemption in whole or in part, except in the case of any Securities of any series to be redeemed in part, the portion thereof not so to be redeemed.

14

SECTION 2.08. Mutilated, Destroyed, Lost or Stolen Securities.

In case any temporary or definitive Security shall become mutilated or be destroyed, lost or stolen, the Company shall execute, and upon its request the Trustee shall authenticate and deliver, a new Security of the same series bearing a number not contemporaneously outstanding, in exchange and substitution for the mutilated Security, or in lieu of and in substitution for the Security so destroyed, lost or stolen. In every case the applicant for a substituted Security shall furnish to the Company and the Trustee such security or indemnity as may be required by them to save each of them harmless, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company and

the Trustee evidence to their satisfaction of the destruction, loss or theft of such Security and of the ownership thereof.

The Trustee may authenticate any such substituted Security and deliver the same upon the written request or authorization of any officer of the Company. Upon the issuance of any substituted Security, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses connected therewith. In case any Security which has matured or is about to mature or has been called for redemption in full shall become mutilated or be destroyed, lost or stolen, the Company may, instead of issuing a substitute Security, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated Security) if the applicant for such payment shall furnish to the Company and the Trustee such security or indemnity as may be required by them to save each of them harmless and, in case of destruction, loss or theft, evidence satisfactory to the Company and to the Trustee of the destruction, loss or theft of such Security and of the ownership thereof.

Every substituted Security of any series issued pursuant to the provisions of this Section 2.08 by virtue of the fact that any such Security is destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security shall be found at any time, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of the same series duly issued hereunder. All Securities shall be held and owned upon the express condition that, to the extent permitted by applicable law, the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or other securities without their surrender.

SECTION 2.09. Temporary Securities.

Pending the preparation of definitive Securities of any series the Company may execute and the Trustee shall authenticate and make available for delivery temporary Securities (typed, printed or lithographed). Temporary Securities shall be issuable in any authorized denomination, and substantially in the form of the definitive Securities but with such omissions, insertions and variations as may be appropriate for temporary Securities, all as may be determined by the Company. Every such temporary Security shall be executed by the Company and be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with the same effect, as the definitive Securities. Without unreasonable delay the

15

Company will execute and deliver to the Trustee or the Authenticating Agent definitive Securities and thereupon any or all temporary Securities of such series may be surrendered in exchange therefor, at the principal corporate trust office of the Trustee or at any office or agency maintained by the Company for such purpose as provided in Section 3.02, and the Trustee or the Authenticating Agent shall authenticate and make available for delivery in exchange for such temporary Securities a like aggregate principal amount of such definitive Securities. Such exchange shall be made by the Company at its own expense and without any charge therefor except that in case of any such exchange involving a registration of transfer the Company may require payment of a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto. Until so exchanged, the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of the same series authenticated and delivered hereunder.

SECTION 2.10. Cancellation of Securities Paid, etc.

All Securities surrendered for the purpose of payment, redemption, exchange or registration of transfer, shall, if surrendered to the Company or any paying agent, be surrendered to the Trustee and promptly cancelled by it, or, if surrendered to the Trustee or any Authenticating Agent, shall be promptly cancelled by it, and no Securities shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Indenture. All Securities cancelled by any Authenticating Agent shall be delivered to the Trustee. The Trustee shall deliver all cancelled Securities to the Company. If the Company shall acquire any of the Securities, however, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Securities unless and until the same are surrendered to the Trustee for cancellation.

SECTION 2.11. Global Securities.

(a) If the Company shall establish pursuant to Section 2.03 that the Securities of a particular series are to be issued as a Global Security, then the Company shall execute and the Trustee shall, in accordance with Section 2.04, authenticate and deliver, one or more Global Securities that (i) shall represent, and shall be denominated in an amount equal to the aggregate

principal amount of, all of the outstanding Securities of such series, (ii) shall be registered in the name of the Depository or its nominee, (iii) shall be delivered by the Trustee to the Depository or pursuant to the Depository's instruction and (iv) shall bear a legend substantially to the following effect:

This Security is a global security within the meaning of the Indenture hereinafter referred to and is registered in the name of a Depository or a nominee of a Depository. This Security is not exchangeable for Securities registered in the name of a person other than the Depository or its nominee, except in the limited circumstances described in the Indenture, and no transfer of this Security (other than a transfer of this Security as a whole by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository) may be registered except in the limited circumstances described in the Indenture.

16

(b) Notwithstanding the provisions of Section 2.07, the Global Security of a series may be transferred, in whole but not in part and in the manner provided in Section 2.07, only to another nominee of the Depository for such series, or to a successor Depository for such series selected or approved by the Company or to a nominee of such successor Depository.

(c) If at any time the Depository for a series of the Securities notifies the Company that it is unwilling or unable to continue as Depository for such series or if at any time the Depository for such series shall no longer be registered or in good standing under the Exchange Act, or other applicable statute or regulation, and a successor Depository for such series is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such condition, as the case may be, this Section 2.11 shall no longer be applicable to the Securities of such series and the Company will execute, and subject to Section 2.07, the Trustee will authenticate and make available for delivery the Securities of such series in definitive registered form without coupons, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global Security of such series in exchange for such Global Security. In addition, the Company may at any time determine that the Securities of any series shall no longer be represented by a Global Security and that the provisions of this Section 2.11 shall no longer apply to the Securities of such series. In such event the Company will execute and subject to Section 2.07, the Trustee, upon receipt of an Officers' Certificate evidencing such determination by the Company, will authenticate and make available for delivery the Securities of such series in definitive registered form without coupons, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global Security of such series in exchange for such Global Security. Upon the exchange of the Global Security for such Securities in definitive registered form without coupons, in authorized denominations, the Global Security shall be cancelled by the Trustee. Such Securities in definitive registered form issued in exchange for the Global Security pursuant to this Section 2.11(c) shall be registered in such names and in such authorized denominations as the Depository, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. The Trustee shall deliver such Securities to the Depository for delivery to the Persons in whose names such Securities are so registered.

So long as the system of registration described in this Section 2.11 is in effect, the Depository, or its nominee, will be considered the sole owner of the Securities and (a) the records of the Depository will be determinative for all purposes and (b) neither the Company, the Trustee nor any paying agent, Security registrar or transfer agent for such Securities will have any responsibility or liability for (i) any aspect of the records relating to or payments made on account of owners of beneficial interests in the Securities of such series, (ii) maintaining, supervising or reviewing any records relating to such beneficial interests, (iii) receipt of notices, voting and requesting or directing the Trustee to take, or not to take, or consenting to, certain actions hereunder, or (iv) the records and procedures of the Depository.

SECTION 2.12. CUSIP Numbers.

The Company in issuing the Securities may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of redemption as a convenience to Securityholders; provided that any such notice

may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in

17

any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee of any change in the CUSIP numbers.

SECTION 2.13. Extension of Interest Payment Period.

The Company shall have the right, at any time and from time to time during the term of any series of the Securities, to defer payments of interest by extending the interest payment period of all Securities of that series for that number of periods established and described in a supplemental indenture or Board Resolution establishing the series (the "Extended Interest Payment Period"), during which Extended Interest Payment Period no interest shall be due and payable; provided that no Extended Interest Payment Period may extend beyond

the Maturity Date. To the extent permitted by applicable law, interest, the payment of which has been deferred because of the extension of the interest payment period pursuant to this Section 2.13, will bear interest thereon at the rate of interest specified in the applicable Security compounded periodically for each interest payment period of the Extended Interest Payment Period ("Compounded Interest"). At the end of the Extended Interest Payment Period, the Company shall pay all interest accrued and unpaid on the Notes, including any Compounded Interest (together, "Deferred Interest"), together with all other amounts due thereon, that shall be payable to the Holders of the Notes in whose names the Notes are registered in the Security Register on the first record date after the end of the Extended Interest Payment Period. Before the termination of any Extended Interest Payment Period, the Company may further extend such period, provided that such period together with all such further extensions thereof shall not exceed the maximum Extended Interest Payment Period established and described in the supplemental indenture or Board Resolution establishing a series of Securities, or extend beyond the Maturity Date of the Notes. Upon the termination of any Extended Interest Payment Period and upon the payment of all Deferred Interest then due, the Company may commence a new Extended Interest Payment Period. No interest shall be due and payable during an Extended Interest Payment Period, except at the end thereof, but the Company may prepay at any time all or any portion of the interest accrued during an Extended Interest Payment Period.

(a) If the Property Trustee (as defined in the Declaration) is the only registered holder of the Notes at the time the Company selects an Extended Interest Payment Period, the Company shall give written notice to the Regular Trustees (as defined in the Declaration), the Property Trustee and the Trustee of its selection of such Extended Interest Payment Period one Business Day before the earlier of (i) the next succeeding date on which Distributions on the Trust Securities issued by the Trust are payable, or (ii) the date the Trust is required to give notice of the record date, or the date such Distributions are payable, to the New York Stock Exchange or any other exchange upon which the Securities or Trust Securities are listed or other applicable self-regulatory organization or to holders of the Capital Securities issued by the Trust, but in any event at least one Business Day before such record date.

(b) If the Property Trustee is not the only holder of the Notes at the time the Company selects an Extended Interest Payment Period, the Company shall give the holders of the Securities and the Trust Securities and the Trustee written notice of its selection of such Extended Interest Payment Period at least 10 Business Days before the earlier of (i) the next

18

succeeding Interest Payment Date, or (ii) the date the Company is required to give notice of the record or payment date of such interest payment to the New York Stock Exchange or any other exchange upon which the Securities or Trust Securities are listed or other applicable self-regulatory organization or to holders of the Securities.

(c) The interest payment period in which any notice is given pursuant to paragraphs (a) or (b) of this Section 2.13 shall be counted as one of the interest payment periods permitted in computing the maximum Extended Interest Payment Period.

ARTICLE 3

PARTICULAR COVENANTS OF THE COMPANY.

SECTION 3.01. Payment of Principal, Premium and Interest.

The Company covenants and agrees for the benefit of each series of Securities that it will duly and punctually pay or cause to be paid the principal of, premium, if any, and interest on each of the Securities of that series at the place, at the respective times and in the manner provided in such Securities. Each installment of interest on the Securities of any series may be paid by mailing checks for such interest payable to the order of the holders of Securities entitled thereto as they appear on the registry books of the Company.

SECTION 3.02. Offices for Notices and Payments, etc.

So long as any of the Securities remains outstanding, the Company will maintain in New York, New York, an office or agency where the Securities of each

series may be presented for payment, an office or agency where the Securities of that series may be presented for registration of transfer and for exchange as in this Indenture provided and an office or agency where notices and demands to or upon the Company in respect of the Securities of that series or of this Indenture may be served. The Company will give to the Trustee written notice of the location of any such office or agency and of any change of location thereof. Until otherwise designated from time to time by the Company in a notice to the Trustee, or specified as contemplated by Section 2.03, any such office or agency for all of the above purposes shall be the office or agency of the Trustee. In case the Company shall fail to maintain any such office or agency in New York, New York, or shall fail to give such notice of the location or of any change in the location thereof, presentations and demands may be made and notices may be served at the principal corporate trust office of the Trustee.

In addition to any such office or agency, the Company may from time to time designate one or more offices or agencies outside New York, New York, where the Securities may be presented for registration of transfer and for exchange in the manner provided in this Indenture, and the Company may from time to time rescind such designation, as the Company may deem desirable or expedient; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain any such office or agency in New York, New York, for the purposes above mentioned. The Company will give to the Trustee prompt written notice of any such designation or rescission thereof.

19

SECTION 3.03. Appointments to Fill Vacancies in Trustee's Office.

The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 6.10, a Trustee, so that there shall at all times be a Trustee hereunder.

SECTION 3.04. Provision as to Paying Agent.

(a) If the Company shall appoint a paying agent other than the Trustee with respect to the Securities of any series, it will cause such paying agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provision of this Section 3.04,

- (1) that it will hold all sums held by it as such agent for the payment of the principal of and premium, if any, or interest, if any, on the Securities of such series (whether such sums have been paid to it by the Company or by any other obligor on the Securities of such series) in trust for the benefit of the holders of the Securities of such series; and
- (2) that it will give the Trustee notice of any failure by the Company (or by any other obligor on the Securities of such series) to make any payment of the principal of and premium, if any, or interest, if any, on the Securities of such series when the same shall be due and payable.

(b) If the Company shall act as its own paying agent, it will, on or before each due date of the principal of and premium, if any, or interest, if any, on the Securities of any series, set aside, segregate and hold in trust for the benefit of the holders of the Securities of such series a sum sufficient to pay such principal, premium or interest so becoming due and will notify the Trustee of any failure to take such action and of any failure by the Company (or by any other obligor under the Securities of such series) to make any payment of the principal of and premium, if any, or interest, if any, on the Securities of such series when the same shall become due and payable.

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

(d) Anything in this Section 3.04 to the contrary notwithstanding, the agreement to hold sums in trust as provided in this Section 3.04 is subject to Sections 11.03 and 11.04.

20

SECTION 3.05. Certificate to Trustee.

The Company will deliver to the Trustee on or before 120 days after the end of each fiscal year in each year, so long as Securities of any series are outstanding hereunder, a Certificate stating that in the course of the

performance by the signers of their duties as officers of the Company they would normally have knowledge of any default by the Company in the performance of any covenants contained herein, stating whether or not they have knowledge of any such default and, if so, specifying each such default of which the signers have knowledge and the nature thereof.

SECTION 3.06. Compliance with Consolidation Provisions.

The Company will not, while any of the Securities remain outstanding, consolidate with, or merge into, or merge into itself, or sell or convey all or substantially all of its property to any other company unless the provisions of Article 10 are complied with.

SECTION 3.07. Limitation on Dividends.

(a) If Securities are held by a Trust or a trustee of such trust in connection with the issuance of Trust Securities by such Trust and (i) there shall have occurred and be continuing any event that would constitute an Event of Default or Nonpayment or (ii) the Company shall be in default with respect to its payment of any obligations under the Capital Securities Guarantee or Common Securities Guarantee relating to such Trust, then:

(x) the Company shall not declare or pay any dividend on, make any distributions with respect to, or redeem, purchase, acquire or make a liquidation payment with respect to, any of its capital stock or make any guarantee payment with respect thereto (other than (i) purchases or acquisitions of shares of its common stock in connection with the satisfaction by the Company of its obligations under any employee benefit plans, (ii) as a result of a reclassification of its capital stock or the exchange or conversion of one class or series of Company capital stock for another class or series of its capital stock or (iii) the purchase of fractional interests in shares of its capital stock pursuant to an acquisition or the conversion or exchange provisions of such capital stock or security being converted or exchanged) or make any guarantee payments with respect to the foregoing, and

(y) the Company shall not make any payment of interest, principal or premium, if any, on or repay, repurchase or redeem any debt securities (including guarantees) issued by the Company which rank pari passu with or junior to such Securities.

(b) If the Company shall exercise its right to defer payment of interest as provided in Section 2.13, and such Extended Interest Payment Period is continuing, then (a) the Company shall not declare or pay any dividend on, make any distributions with respect to, or redeem, purchase, acquire or make a liquidation payment with respect to, any of its capital stock or make any guarantee payment with respect thereto (other than (i) purchases or acquisitions of shares of its common stock in connection with the satisfaction by the Company of its obligations under any employee benefit plans, (ii) as a result of a reclassification of its capital stock or the exchange or conversion of one class or series of Company capital stock for another class or series of Company capital stock or (iii) the purchase of fractional interests in shares of its capital

21

stock pursuant to an acquisition or the conversion or exchange provisions of such capital stock or security being converted or exchanged) or make any guarantee payments with respect thereto and (b) the Company shall not make any payment of interest, principal or premium, if any, on or repay, repurchase or redeem any debt securities (including guarantees) issued by the Company which rank pari passu with or junior to the Securities.

SECTION 3.08. Covenants as to Trusts.

In the event Securities are issued to a Trust or a trustee of such trust in connection with the issuance of Trust Securities by such Trust, for so long as such Trust Securities remain outstanding, the Company will (i) maintain 100% direct or indirect ownership of the Common Securities of such Trust, (ii) use its reasonable efforts to cause such Trust (a) to remain a business trust, except in connection with a distribution of Securities, the redemption of all of the Trust Securities of such Trust or certain mergers, consolidations or amalgamations, each as permitted by the Declaration of such Trust, and (b) to otherwise continue not to be treated as an association taxable as a corporation or partnership for United States federal income tax purposes and (iii) use its reasonable efforts to cause each holder of Trust Securities to be treated as owning an undivided beneficial interest in the Securities.

SECTION 3.09. Calculation of Original Issue Discount.

The Company shall file with the Trustee promptly at the end of each calendar year a written notice specifying the amount of any original issue discount (including daily rates and accrual periods) accrued on outstanding Securities as of the end of such year.

ARTICLE 4

SECURITYHOLDERS' LISTS AND REPORTS BY THE COMPANY AND THE TRUSTEE.

SECTION 4.01. Securityholders' Lists.

The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee:

- (a) on a monthly basis on each regular record date for each series of Securities, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Securityholders of such series of Securities as of such record date (and on dates to be determined pursuant to Section 2.03 for non-interest bearing securities in each year); and
- (b) at such other times as the Trustee may request in writing, within 30 days after the receipt by the Company, of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished,

except that no such lists need be furnished so long as the Trustee is in possession thereof by reason of its acting as Security registrar for such series.

22

SECTION 4.02. Preservation and Disclosure of Lists.

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the holders of each series of Securities (1) contained in the most recent list furnished to it as provided in Section 4.01 or (2) received by it in the capacity of Securities registrar (if so acting) hereunder. The Trustee may destroy any list furnished to it as provided in Section 4.01 upon receipt of a new list so furnished.

(b) In case three or more holders of Securities of any series (hereinafter referred to as "applicants") apply in writing to the Trustee and furnish to the Trustee reasonable proof that each such applicant has owned a Security of such series for a period of at least six months preceding the date of such application, and such application states that the applicants desire to communicate with other holders of Securities of such series or with holders of all Securities with respect to their rights under this Indenture or under such Securities and is accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, then the Trustee shall within five business days after the receipt of such application, at its election, either:

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

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

tender; otherwise the Trustee shall be relieved of any obligation or duty to such applicants respecting their application.

(c) Each and every holder of Securities, by receiving and holding the same, agrees with Company and the Trustee that neither the Company nor the Trustee nor any paying agent shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the holders of Securities in accordance with the provisions of subsection (b) of this Section 4.02, regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under subsection 4.02(b).

SECTION 4.03. Reports by Company.

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

(b) The Company covenants and agrees to file with the Trustee and the Commission, in accordance with the rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by the Company with the conditions and covenants provided for in this Indenture as may be required from time to time by such rules and regulations.

(c) Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Certificates and Officers' Certificates).

SECTION 4.04. Reports by the Trustee.

(a) The Trustee shall transmit to Securityholders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto. If required by Section 313(a) of the Trust Indenture Act, the Trustee shall, within 60 days after each March 31 following the date of this Indenture deliver to Securityholders a brief report, dated as of such March 31, which complies with the provisions of such Section 313(a).

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

ARTICLE 5

REMEDIES OF THE TRUSTEE AND SECURITYHOLDERS

SECTION 5.01. Events of Default.

In case one or more of the following Events of Default with respect to Securities of any series or such other events as may be established with respect to the Securities of that series as contemplated by Section 2.03 hereof shall have occurred and be continuing:

- (a) a court having jurisdiction in the premises shall enter a decree or order for relief in respect of the Company in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Company or for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and such decree or order shall remain unstayed and in effect for a period of 90

consecutive days; or

- (b) the Company shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Company or of any substantial part of its property, or shall make any general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due; or
- (c) in the event Securities are held by a Trust or a trustee of such Trust, such Trust shall have voluntarily or involuntarily dissolved, wound-up its business or otherwise terminated its existence except in connection with (i) the distribution of Securities to holders of Trust Securities in liquidation of their interests in such Trust, (ii) the redemption of all of the outstanding Trust Securities of such Trust or (iii) certain mergers, consolidations or amalgamations, each as permitted by the Declaration of such Trust;

then, and in each and every such case, unless the principal of all of the Securities of such series shall have already become due and payable, either the Trustee or the holders of not less than 25% in aggregate principal amount of the Securities of that series then outstanding hereunder, by notice in writing to the Company (and to the Trustee if given by Securityholders), may declare the entire principal (or, if the Securities of that series are Original Issue Discount Securities, such

25

portion of the principal amount as may be specified in the terms of that series) of all Securities of that series and the interest accrued thereon, if any, to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable.

The foregoing provisions, however, are subject to the condition that if, at any time after the principal (or, if the Securities are Original Issue Discount Securities, such portion of the principal as may be specified in the terms thereof) of the Securities of any series (or of all the Securities, as the case may be) shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay all matured installments of interest upon all the Securities of such series (or of all the Securities, as the case may be) and the principal of and premium, if any, on any and all Securities of such series (or of all the Securities, as the case may be) which shall have become due otherwise than by acceleration (with interest upon such principal and premium, if any, and, to the extent that payment of such interest is enforceable under applicable law, on overdue installments of interest, at the same rate as the rate of interest or Yield to Maturity (in the case of Original Issue Discount Securities) specified in the Securities of such series, (or at the respective rates of interest or Yields to Maturity of all the Securities, as the case may be) to the date of such payment or deposit) and such amount as shall be sufficient to cover reasonable compensation to the Trustee and each predecessor Trustee, their respective agents, attorneys and counsel, and all other expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee except as a result of negligence or bad faith, and if any and all Events of Default under the Indenture, shall have been cured, waived or otherwise remedied as provided herein -- then and in every such case the holders of a majority in aggregate principal amount of the Securities of such series (or of all the Securities, as the case may be) then outstanding, by written notice to the Company and to the Trustee, may waive all defaults with respect to that series (or with respect to all Securities, as the case may be, in such case, treated as a single class) and rescind and annul such declaration and its consequences, but no such waiver or rescission and annulment shall extend to or shall affect any subsequent default or shall impair any right consequent thereon.

In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned because of such rescission or annulment or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Company, the Trustee and the holders of the Securities shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Company, the Trustee and the holders of the Securities shall continue as though no such proceeding had been taken.

SECTION 5.02. Payment of Securities on Default; Suit Therefor.

The Company covenants that:

- (a) in case of nonpayment of any installment of interest upon any of the Securities of any series as and when the same shall become due and payable, and such nonpayment shall have continued for a period of 30 days, or

26

- (b) in case of nonpayment of any of the principal of or premium, if any, on any of the Securities of any series as and when the same shall have become due and payable, whether at maturity of the Securities of that series or upon redemption or by declaration or otherwise, or
- (c) in case there shall have occurred a failure in the performance, or breach, of any covenant or warranty of the Company in this Indenture (other than those set forth exclusively in terms of any particular series of Securities established as contemplated in this Indenture), and continuance of such failure or breach for a period of 90 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the holders of at least 25% in aggregate principal amount of the outstanding Securities a written notice specifying such failure or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder;

then, upon demand of the Trustee, the Company will pay to the Trustee, for the benefit of the holders of the Securities of that series, the amount that then shall have become due and payable on all such Securities of that series for principal and premium, if any, or interest, or both, as the case may be, with interest upon the overdue principal and premium, if any, and (to the extent that payment of such interest is enforceable under applicable law and, if the Securities are held by a Trust or a trustee of such trust, without duplication of any other amounts paid by a Trust or trustee in respect thereof) upon the overdue installments of interest at the rate or Yield to Maturity (in the case of Original Issue Discount Securities) borne by the Securities of that series; and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including a reasonable compensation to the Trustee, its agents, attorneys and counsel, and any expenses or liabilities incurred by the Trustee hereunder other than through its negligence or bad faith.

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

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor on the Securities of any series under the Bankruptcy Law, or any other applicable law, or in case a receiver or trustee shall have been appointed for the property of the Company or such other obligor, or in the case of any other similar judicial proceedings relative to the Company or other obligor upon the Securities of any series, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the principal of the Securities of any series shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 5.02, shall be entitled and empowered, by intervention

27

in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal and interest (or, if the Securities of that series are Original Issue Discount Securities such portion of the principal amount as may be specified in the terms of that series) owing and unpaid in respect of the Securities of such series and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee and each predecessor Trustee, and their respective agents, attorneys and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee, except as a result of negligence or bad faith) and of the Securityholders allowed in such judicial proceedings relative to the Company or

any other obligor on the Securities of any series, or to the creditors or property of the Company or such other obligor, unless prohibited by applicable law and regulations, to vote on behalf of the holders of the Securities or any series in any election of a trustee or a standby trustee in arrangement, reorganization, liquidation or other bankruptcy or insolvency proceedings or person performing similar functions in comparable proceedings, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute the same after the deduction of its charges and expenses; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the Securityholders to make such payments to the Trustee, and, in the event that the Trustee shall consent to the making of such payments directly to the Securityholders, to pay to the Trustee such amounts as shall be sufficient to cover reasonable compensation to the Trustee, each predecessor Trustee and their respective agents, attorneys and counsel, and all other expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee except as a result of negligence or bad faith.

Nothing herein contained shall be construed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Securityholder any plan of reorganization, arrangement, adjustment or composition affecting the Securities of any series or the rights of any holder thereof or to authorize the Trustee to vote in respect of the claim of any Securityholder in any such proceeding.

All rights of action and of asserting claims under this Indenture, or under any of the Securities, may be enforced by the Trustee without the possession of any of the Securities, or the production thereof on any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be for the ratable benefit of the holders of the Securities.

In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the holders of the Securities, and it shall not be necessary to make any holders of the Securities parties to any such proceedings.

Notwithstanding any provision in this Section 5.02, neither the Trustee nor the Securityholders shall have the right to accelerate payment of any series of the Securities or otherwise to declare such Securities due and payable except as specifically set forth in Section 5.01.

28

SECTION 5.03. Application of Moneys Collected by Trustee.

Any moneys collected by the Trustee shall be applied in the following order, at the date or dates fixed by the Trustee for the distribution of such moneys, upon presentation of the several Securities in respect of which moneys have been collected, and stamping thereon the payment, if only partially paid, and upon surrender thereof if fully paid:

First: To the payment of costs and expenses of collection applicable to such series and reasonable compensation to the Trustee, its agents, attorneys and counsel, and of all other expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its negligence or bad faith;

Second: To the payment of all Senior Obligations of the Company if and to the extent required by Article 15;

Third: In case the principal of the outstanding Securities in respect of which moneys have been collected shall not have become due and be unpaid, to the payment of the amounts then due and unpaid upon Securities of such series for principal (and premium, if any), and interest on the Securities of such series, in respect of which or for the benefit of which money has been collected, ratably, without preference or priority of any kind, according to the amounts due on such Securities for principal (and premium, if any) and interest, respectively.

SECTION 5.04. Proceedings by Securityholders.

Subject to the rights granted to the holder of a series under Section 13.13, no holder of any Security of any series shall have any right by virtue of or by availing of any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless (i) such holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof with respect to the Securities of such series specifying such Event of Default, as hereinbefore provided; (ii) the holders of not less than 25% in aggregate principal amount of the Securities of that series then outstanding shall have made written request upon the Trustee to institute such action, suit or

proceeding in its own name as Trustee hereunder; (iii) such holder or holders shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby; (iv) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity shall have failed to institute any such action, suit or proceeding, and (v) during such 60 day period the holders of a majority in principal amount of the Securities of that series do not give the Trustee a direction inconsistent with the request; it being understood and intended, and being expressly covenanted by the taker and holder of every Security with every other taker and holder and the Trustee, that no one or more holders of Securities of any series shall have any right in any manner whatever by virtue of or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of any other holder of Securities, or to obtain or seek to obtain priority over or preference to any other such holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all holders of Securities of the applicable series.

29

Notwithstanding any other provisions in this Indenture, however, the right of any holder of any Security to receive payment of the principal of (premium, if any) and interest, if any, on such Security, on or after the same shall have become due and payable, or to institute suit for the enforcement of any such payment, shall not be impaired or affected without the consent of such holder and by accepting a Security hereunder it is expressly understood, intended and covenanted by the taker and holder of every Security of such series with every other such taker and holder and the Trustee, that no one or more holders of Securities of such series shall have any right in any manner whatsoever by virtue or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of the holders of any other such Securities, or to obtain or seek to obtain priority over or preference to any other such holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all holders of Securities of series. For the protection and enforcement of the provisions of this Section, each and every Securityholder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

SECTION 5.05. Proceedings by Trustee.

In case of an Event of Default hereunder the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any of such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

SECTION 5.06. Remedies Cumulative and Continuing.

Except as otherwise provided in Section 2.08, all powers and remedies given by this Article 5 to the Trustee or to the Securityholders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any other powers and remedies available to the Trustee or the holders of the Securities, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture or otherwise established with respect to such series, and no delay or omission of the Trustee or of any holder of any of the Securities to exercise any right or power accruing upon any Event of Default occurring and continuing as aforesaid shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein; and, subject to the provisions of Section 5.04, every power and remedy given by this Article 5 or by law to the Trustee or to the Securityholders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Securityholders.

SECTION 5.07. Direction of Proceedings and Waiver of Defaults by Majority of Securityholders.

The holders of a majority in aggregate principal amount of the Securities of any or all series affected (voting as one class) at the time outstanding shall have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee; provided, however, that (subject to the

30

provisions of Section 6.01) the Trustee shall have the right to decline to follow any such direction if the Trustee shall determine that the action so

directed would be unjustly prejudicial to the holders not taking part in such direction or if the Trustee being advised by counsel determines that the action or proceeding so directed may not lawfully be taken or if the Trustee in good faith by its board of directors or trustees, executive committee, or a trust committee of directors or trustees and/or Responsible Officers shall determine that the action or proceedings so directed would involve the Trustee in personal liability. Prior to any declaration accelerating the maturity of any series of the Securities, or of all the Securities, as the case may be, the holders of a majority in aggregate principal amount of the Securities of that series at the time outstanding may on behalf of the holders of all of the Securities of such series waive any past default or Event of Default including any default established pursuant to Section 2.03 and its consequences except a default (a) in the payment of principal of, premium, if any, or interest on any of the Securities, (b) in respect of covenants or provisions hereof which cannot be modified or amended without the consent of the holder of each Security affected, or (c) a default of the covenants contained in Section 3.07; provided, however, that if the Securities of such series are held by a Trust or a trustee of such trust, such waiver or modification to such waiver shall not be effective until the holders of a majority in liquidation preference of Trust Securities of the applicable Trust shall have consented to such waiver or modification to such waiver; provided further, that if the consent of the Holder of each outstanding Security is required, such waiver shall not be effective until each holder of the Trust Securities of the applicable Trust shall have consented to such waiver. Upon any such waiver, the default covered thereby shall be deemed to be cured for all purposes of this Indenture and the Company, the Trustee and the holders of the Securities of such series shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon. Upon any such waiver the Company, the Trustee and the holders of the Securities of that series (or of all Securities, as the case may be) shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon. Whenever any default or Event of Default hereunder shall have been waived as permitted by this Section 5.07, such default or Event of Default shall for all purposes of the Securities of that series (or of all Securities, as the case may be) and this Indenture be deemed to have been cured and to be not continuing.

SECTION 5.08. Notice of Defaults and Nonpayments.

The Trustee shall, within 90 days after the occurrence of a default with respect to the Securities of any series, mail to all Securityholders of that series, as the names and addresses of such holders appear upon the Security register, notice of all defaults with respect to that series and notice of nonpayment of principal, premium, if any, or interest, when due on the Securities of such series ("Nonpayments") known to the Trustee, unless such defaults or Nonpayments shall have been cured before the giving of such notice (the term "defaults" for the purpose of this Section 5.08 being hereby defined to be the events specified in clauses (a) and (b) of Section 5.01, not including periods of grace, if any, provided for therein).

31

SECTION 5.09. Undertaking to Pay Costs.

All parties to this Indenture agree, and each holder of any Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 5.09 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Securityholder, or group of Securityholders of any series, holding in the aggregate more than 10% in principal amount of the Securities of that series outstanding, or to any suit instituted by any Securityholder for the enforcement of the payment of the principal of (or premium, if any) or interest on any Security against the Company on or after the same shall have become due and payable.

ARTICLE 6

CONCERNING THE TRUSTEE

SECTION 6.01. Duties and Responsibilities of Trustee.

With respect to the holders of any series of Securities issued hereunder, the Trustee, prior to the occurrence of an Event of Default with respect to Securities of that series and after the curing or waiving of all Events of Default which may have occurred, with respect to Securities of that series, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default with respect to the

Securities of a series has occurred (which has not been cured or waived) the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

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

- (a) prior to the occurrence of an Event of Default with respect to Securities of a series and after the curing or waiving of all Events of Default with respect to that series which may have occurred
 - (1) the duties and obligations of the Trustee with respect to Securities of a series shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations with respect to such series as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and
- (2) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but, in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture;
- (b) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; and
- (c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith, in accordance with the direction of the Securityholders pursuant to Section 5.07, relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture.

32

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if there is reasonable ground for believing that the repayment of such funds or liability is not reasonably assured to it under the terms of this Indenture or adequate indemnity against such risk is not reasonably assured to it.

SECTION 6.02. Reliance on Documents, Opinions, etc.

Except as otherwise provided in Section 6.01:

- (a) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, note, debenture or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;
- (b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officers' Certificate (unless other evidence in respect thereof be herein specifically prescribed); and any Board Resolution may be evidenced to the Trustee by a copy thereof certified by the Secretary or an Assistant Secretary of the Company;
- (c) the Trustee may consult with counsel of its selection and any advice or Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or suffered omitted by it hereunder in good faith and in accordance with such advice or Opinion of Counsel;

33

- (d) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Securityholders, pursuant to the provisions of this Indenture, unless such Securityholders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which may be incurred therein or thereby;
- (e) the Trustee shall not be liable for any action taken or omitted by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture; nothing contained herein shall, however, relieve the Trustee of the obligation, upon the occurrence of an Event of Default with respect to a series of the Securities (that has not been cured or waived) to exercise with respect to Securities of that series such of the rights and powers vested in it by this Indenture, and to use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs;
- (f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond, debenture, coupon or other paper or document, unless requested in writing to do so by the holders of not less than a majority in principal amount of the outstanding Securities of the series affected thereby; provided, however, that if the payment within a reasonable time to the Trustee of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee, not reasonably assured to the Trustee by the security afforded to it by the terms of this Indenture, the Trustee may require reasonable indemnity against such expense or liability as a condition to so proceeding; and
- (g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents (including any Authenticating Agent) or attorneys, and the Trustee shall not be responsible for any misconduct or negligence on the part of any such agent or attorney appointed by it with due care.

SECTION 6.03. No Responsibility for Recitals, etc.

The recitals contained herein and in the Securities (except in the certificate of authentication of the Trustee or the Authenticating Agent) shall be taken as the statements of the Company and the Trustee and the Authenticating Agent assume no responsibility for the correctness of the same. The Trustee and the Authenticating Agent make no representations as to the validity or sufficiency of this Indenture or of the Securities. The Trustee and the Authenticating Agent shall not be accountable for the use or application by the Company of any Securities or the proceeds of any Securities authenticated and delivered by the Trustee or the Authenticating Agent in conformity with the provisions of this Indenture.

34

SECTION 6.04. Trustee, Authenticating Agent, Paying Agents, Transfer Agents or Registrar May Own Securities.

The Trustee or any Authenticating Agent or any paying agent or any transfer agent or any Security registrar, in its individual or any other capacity, may become the owner or pledgee of Securities with the same rights it would have if it were not Trustee, Authenticating Agent, paying agent, transfer agent or Security registrar.

SECTION 6.05. Moneys to be Held in Trust.

Subject to the provisions of Section 11.04, all moneys received by the Trustee or any paying agent shall, until used or applied as herein provided, be held in trust for the purpose for which they were received, but need not be segregated from other funds except to the extent required by law. The Trustee and any paying agent shall be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing with the Company. So long as no Event of Default shall have occurred and be continuing, all interest allowed on any such moneys shall be paid from time to time upon the written order of the Company, signed by any Authorized Officer.

SECTION 6.06. Compensation and Expenses of Trustee.

The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, such compensation as shall be agreed to in writing between the Company and the Trustee (which shall not be limited by any

provision of law in regard to the compensation of a trustee of an express trust), and the Company will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and of all persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its negligence or bad faith. The Company also covenants to indemnify each of the Trustee or any predecessor Trustee (and its officers, agents, directors and employees) for, and to hold it harmless against, any and all loss, damage, claim, liability or expense including taxes (other than taxes based on the income of the Trustee) incurred without negligence or bad faith on the part of the Trustee and arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of defending itself against any claim of liability in the premises. The obligations of the Company under this Section 6.06 to compensate and indemnify the Trustee and to pay or reimburse the Trustee for expenses, disbursements and advances shall constitute additional indebtedness hereunder. Such additional indebtedness shall be secured by a lien prior to that of the Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the holders of particular Securities.

When the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 5.01(a) or Section 5.01(b), the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable federal or state bankruptcy, insolvency or other similar law.

35

The provisions of this Section shall survive the termination of this Indenture.

SECTION 6.07. Officers' Certificate as Evidence.

Except as otherwise provided in Sections 6.01 and 6.02, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or bad faith on the part of the Trustee, be deemed to be conclusively proved and established by an Officers' Certificate delivered to the Trustee, and such certificate, in the absence of negligence or bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken or omitted by it under the provisions of this Indenture upon the faith thereof.

SECTION 6.08. Conflicting Interest of Trustee.

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

SECTION 6.09. Eligibility of Trustee.

The Trustee hereunder shall at all times be a corporation organized and doing business under the laws of the United States of America or any state or territory thereof or of the District of Columbia or a corporation or other Person permitted to act as trustee by the Commission authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000 and subject to supervision or examination by federal, state, territorial, or District of Columbia authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section 6.09 the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

The Company may not, nor may any Person directly or indirectly controlling, controlled by, or under common control with the Company, serve as Trustee.

In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 6.09, the Trustee shall resign immediately in the manner and with the effect specified in Section 6.10.

SECTION 6.10. Resignation or Removal of Trustee.

(a) The Trustee, or any trustee or trustees hereafter appointed, may at any time resign with respect to one or more or all series of Securities by giving written notice of such resignation to the Company and by mailing notice thereof to the holders of the applicable series of Securities at their addresses as they shall appear on the Security register. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee or trustees

with respect to the applicable series by written instrument, in duplicate, executed under the authority of a Board Resolution, one copy of which instrument shall be delivered to the resigning Trustee and one

36

copy to the successor trustee. If no successor trustee shall have been so appointed with respect to any series of Securities and have accepted appointment within 60 days after the mailing of such notice of resignation to the affected Securityholders, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor trustee, or any Securityholder who has been a bona fide holder of a Security or Securities of the applicable series for at least six months may, subject to the provisions of Section 5.09, on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

- (b) In case at any time any of the following shall occur --
- (1) the Trustee shall fail to comply with the provisions of Section 6.08 after written request therefor by the Company or by any Securityholder who has been a bona fide holder of a Security or Securities for at least six months, or
 - (2) the Trustee shall cease to be eligible in accordance with the provisions of Section 6.09 and shall fail to resign after written request therefor by the Company or by any such Securityholder, or
 - (3) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, the Company may remove the Trustee and appoint a successor trustee by written instrument, in duplicate, executed under the authority of a Board Resolution, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 5.09, any Securityholder who has been a bona fide holder of a Security or Securities of the applicable series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The holders of a majority in aggregate principal amount of the Securities of any series at the time outstanding may at any time remove the Trustee with respect to such series and nominate a successor trustee with respect to the applicable series of Securities or all series, as the case may be, which shall be deemed appointed as successor trustee with respect to the applicable series unless within 10 days after such nomination the Company objects thereto, in which case the Trustee so removed or any Securityholder of the applicable series, upon the terms and conditions and otherwise as in subsection (a) of this Section 6.10 provided, may petition any court of competent jurisdiction for an appointment of a successor trustee with respect to such series.

37

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

SECTION 6.11. Acceptance by Successor Trustee.

Any successor trustee appointed as provided in Section 6.10 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the retiring trustee with respect to all or any applicable series shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations with respect to such series of its predecessor hereunder, with like effect as if originally named as trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall, upon payment of any amounts then due it pursuant to the provisions of Section 6.06, execute and deliver an instrument

transferring to such successor trustee all the rights and powers of the trustee so ceasing to act and shall duly assign, transfer and deliver to such successor trustee all property and money held by such retiring trustee thereunder. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such trustee to secure any amounts then due it pursuant to the provisions of Section 6.06.

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

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

Upon acceptance of appointment by a successor trustee as provided in this Section 6.11, the Company shall mail notice of the succession of such trustee hereunder to the holders of Securities of any applicable series at their addresses as they shall appear on the Security register. If the Company fails to mail such notice within 10 days after the acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of the Company.

38

SECTION 6.12. Succession by Merger, etc.

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto.

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

SECTION 6.13. Limitation on Rights of Trustee as a Creditor.

The Trustee shall comply with Section 311(a) of the Trust Indenture Act, excluding any creditor relationship described in Section 311(b) of the Trust Indenture Act. A Trustee who has resigned or been removed shall be subject to Section 311(a) of the Trust Indenture Act to the extent included therein.

SECTION 6.14. Authenticating Agents.

The Trustee may appoint one or more Authenticating Agents upon the request of the Company with power to act on its behalf and subject to its direction in the authentication and delivery of Securities of any series issued upon exchange or transfer thereof as fully to all intents and purposes as though any such Authenticating Agent had been expressly authorized to authenticate and deliver Securities of such series; provided, that the Trustee shall have no liability to the Company for any acts or omissions of the Authenticating Agent with respect to the authentication and delivery of Securities of any series. Securities authenticated by an Authenticating Agent shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as

if authenticated by the Trustee. Each Authenticating Agent shall at all times be a corporation organized and doing business under the laws of the United States or of any state or territory thereof or of the District of Columbia authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of at least \$50,000,000 and being subject to supervision or examination by federal, state, territorial or District of Columbia authority. If such corporation publishes reports of condition at least annually pursuant to law or the requirements of such authority, then for the purposes of this Section 6.14 the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating

39

Agent shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect herein specified in this Section.

Any corporation into which any Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, consolidation or conversion to which any Authenticating Agent shall be a party, or any corporation succeeding to the corporate trust business of any Authenticating Agent, shall be the successor of such Authenticating Agent hereunder, if such successor corporation is otherwise eligible under this Section 6.14 without the execution or filing of any paper or any further act on the part of the parties hereto or such Authenticating Agent.

Any Authenticating Agent may at any time resign with respect to one or more or all series of Securities by giving written notice of resignation to the Trustee and to the Company. The Trustee may at any time terminate the agency of any Authenticating Agent with respect to one or more or all series of Securities by giving written notice of termination to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time any Authenticating Agent shall cease to be eligible under this Section 6.14, the Trustee may, and upon the request of the Company shall, promptly appoint a successor Authenticating Agent with respect to the applicable series eligible under this Section 6.14, shall give written notice of such appointment to the Company and shall mail notice of such appointment to all holders of the applicable series of Securities as the names and addresses of such holders appear on the Security register. Any successor Authenticating Agent with respect to all or any series upon acceptance of its appointment hereunder shall become vested with all rights, powers, duties and responsibilities with respect to such series of its predecessor hereunder, with like effect as if originally named as Authenticating Agent herein.

The Company shall pay to any Authenticating Agent from time to time reasonable compensation for its services as may be periodically agreed by them in writing. Any Authenticating Agent shall have no responsibility or liability for any action taken by it as such in accordance with the directions of the Trustee.

If an appointment with respect to one of more series of Securities is made pursuant to this Section, the Securities of such series may have endorsed thereon an alternative certificate of authentication in the following form:

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

THE BANK OF NEW YORK
As Trustee

By: _____
As Authenticating Agent

By: _____
Authorized Officer"

40

ARTICLE 7

CONCERNING THE SECURITYHOLDERS

SECTION 7.01. Action by Securityholders.

Whenever in this Indenture it is provided that the holders of a specified percentage in aggregate principal amount of the Securities of any or all series may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action) the fact that at the time of taking any such action the holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by such Securityholders in person or by agent or proxy appointed in writing, or (b) by the record of

such holders of Securities voting in favor thereof at any meeting of such Securityholders duly called and held in accordance with the provisions of Article 8, or (c) by a combination of such instrument or instruments and any such record of such a meeting of such Securityholders.

If the Company shall solicit from the Securityholders of any series any request, demand, authorization, direction, notice, consent, waiver or other action, the Company may, at its option, as evidenced by an Officers' Certificate, fix in advance a record date for such series for the determination of Securityholders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other action, but the Company shall have no obligation to do so. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other action may be given before or after the record date, but only the Securityholders of record at the close of business on the record date shall be deemed to be Securityholders for the purposes of determining whether Securityholders of the requisite proportion of outstanding Securities of that series have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other action, and for that purpose the outstanding Securities of that series shall be computed as of the record date; provided, however, that no such authorization, agreement or consent by such Securityholders on the record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six months after the record date.

SECTION 7.02. Proof of Execution by Securityholders.

Subject to the provisions of Section 6.01, 6.02 and 8.05, proof of the execution of any instrument by a Securityholder or his agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee. The ownership of Securities shall be proved by the Security register or by a certificate of the Security registrar. The Trustee may require such additional proof of any matter referred to in this Section as it shall deem necessary.

The record of any Securityholders' meeting shall be proved in the manner provided in Section 8.06.

41

SECTION 7.03. Who Are Deemed Absolute Owners.

Prior to due presentment for registration of transfer of any Security, the Company, the Trustee, any Authenticating Agent, any paying agent, any transfer agent and any Security registrar may deem the Person in whose name such Security shall be registered upon the Security register (including a Depository in the case of a Global Security) to be, and may treat him as, the absolute owner of such Security (whether or not such Security shall be overdue) for the purpose of receiving payment of or on account of the principal of, premium, if any, and interest on such Security and for all other purposes; and neither the Company nor the Trustee nor any Authenticating Agent nor any paying agent nor any transfer agent nor any Security registrar shall be affected by any notice to the contrary. All such payments so made to any holder for the time being or upon his order shall be valid, and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for moneys payable upon any such Security.

SECTION 7.04. Securities Owned by Company Deemed Not Outstanding.

In determining whether the holders of the requisite aggregate principal amount of Securities have concurred in any direction, consent or waiver under this Indenture, Securities which are owned by the Company or any other obligor on the Securities or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any other obligor on the Securities shall be disregarded and deemed not to be outstanding for the purpose of any such determination; provided that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent or waiver, only Securities which the Trustee actually knows are so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as outstanding for the purposes of this Section 7.04 if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Securities and that the pledgee is not the Company or any such other obligor or person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any such other obligor. In the case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee.

SECTION 7.05. Revocation of Consents; Future Holders Bound.

At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 7.01, of the taking of any action by the holders of the percentage in aggregate principal amount of the Security specified in this Indenture in connection with such action, any holder of a Security (or any

Security issued in whole or in part in exchange or substitution therefor) the serial number of which is shown by the evidence to be included in the Securities the holders of which have consented to such action may, by filing written notice with the Trustee at its principal office and upon proof of holding as provided in Section 7.02, revoke such action so far as concerns such Security (or so far as concerns the principal amount represented by any exchanged or substituted Security). Except as aforesaid any such action taken by the holder of any Security shall be conclusive and binding upon such holder and upon all future holders and owners of such Security, and of any Security issued in exchange or substitution therefor, irrespective of whether or not any notation in regard thereto is made upon such Security or any Security issued in exchange or substitution therefor.

42

ARTICLE 8

SECURITYHOLDERS' MEETINGS

SECTION 8.01. Purposes of Meetings.

A meeting of Securityholders of any or all series may be called at any time and from time to time pursuant to the provisions of this Article 8 for any of the following purposes:

- (a) to give any notice to the Company or to the Trustee, or to give any directions to the Trustee, or to consent to the waiving of any default hereunder and its consequences, or to take any other action authorized to be taken by Securityholders pursuant to any of the provisions of Article 5;
- (b) to remove the Trustee and nominate a successor trustee pursuant to the provisions of Article 6;
- (c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 9.02; or
- (d) to take any other action authorized to be taken by or on behalf of the holders of any specified aggregate principal amount of such Securities under any other provision of this Indenture or under applicable law.

SECTION 8.02. Call of Meetings by Trustee.

The Trustee may at any time call a meeting of Securityholders of any or all series to take any action specified in Section 8.01, to be held at such time and in the Borough of Manhattan, New York, New York, or such other location as the Trustee shall determine. Notice of every meeting of the Securityholders of any or all series, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be mailed to holders of Securities of each series affected at their addresses as they shall appear on the Securities of each series affected register. Such notice shall be mailed not less than 20 nor more than 180 days prior to the date fixed for the meeting.

SECTION 8.03. Call of Meetings by Company or Securityholders.

In case at any time the Company pursuant to a Board Resolution, or the holders of at least 10% in aggregate principal amount of the Securities of any or all series, as the case may be, then outstanding, shall have requested the Trustee to call a meeting of Securityholders of any or all series, as the case may be, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed the notice of such meeting within 20 days after receipt of such request, then the Company or such Securityholders may determine the time and the place in the Borough of Manhattan, City of New York for such meeting and may call such meeting to take any action authorized in Section 8.01, by mailing notice thereof as provided in Section 8.02.

43

SECTION 8.04. Qualifications for Voting.

To be entitled to vote at any meeting of Securityholders a person shall (a) be a holder of one or more Securities with respect to which the meeting is being held or (b) a person appointed by an instrument in writing as proxy by a holder of one or more such Securities. The only persons who shall be entitled to be present or to speak at any meeting of Securityholders shall be the persons entitled to vote at such meeting and their counsel, any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

SECTION 8.05. Regulations.

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

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Securityholders as provided in Section 8.03, in which case the Company or the Securityholders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by majority vote of the meeting.

Subject to the provisions of Section 7.04 and unless otherwise provided in a Board Resolution or an indenture supplemental hereto, at any meeting each holder of Securities with respect to which such meeting is being held or proxy therefor shall be entitled to one vote for each \$25 principal amount (in the case of Original Issue Discount Securities, such principal amount to be determined as provided in the definition "outstanding") of Securities held or represented by him; provided, however, that no vote shall be cast or counted at any meeting in respect of any Security challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Securities held by him or instruments in writing as aforesaid duly designating him as the person to vote on behalf of other Securityholders. Any meeting of Securityholders duly called pursuant to the provisions of Section 8.02 or 8.03 may be adjourned from time to time by a majority of those present, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

SECTION 8.06. Voting.

The vote upon any resolution submitted to any meeting of holders of Securities with respect to which such meeting is being held shall be by written ballots on which shall be subscribed the signatures of such holders or of their representatives by proxy and the serial number or numbers of the Securities held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in triplicate of all votes cast at the meeting. A record in duplicate of the

44

proceedings of each meeting of Securityholders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that the notice was mailed as provided in Section 8.02. The record shall show the serial numbers of the Securities voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

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

ARTICLE 9

SUPPLEMENTAL INDENTURES

SECTION 9.01. Supplemental Indentures without Consent of Securityholders.

The Company and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act as then in effect), without the consent of the Securityholders, for one or more of the following purposes:

- (a) to evidence the succession of another corporation to the Company, or successive successions, and the assumption by the successor corporation of the covenants, agreements and obligations of the Company pursuant to Article 10 hereof;
- (b) to add to the covenants of the Company such further covenants, restrictions or conditions for the protection of the holders of all or any series of Securities (and if such covenants are to be for the benefit of less than all series of Securities stating that such covenants are expressly being included for the benefit of such series) as the Company and the Trustee shall consider to be for the protection of the holders of such Securities, and to

make the occurrence, or the occurrence and continuance, of a default in any of such additional covenants, restrictions or conditions a default or an Event of Default permitting the enforcement of all or any of the several remedies provided in this Indenture as herein set forth; provided, however, that in respect of any such additional covenant, restriction or condition such supplemental indenture may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such default or may limit the remedies available to the Trustee upon such default;

45

- (c) to provide for the issuance under this Indenture of Securities in coupon form (including Securities registrable as to principal only) and to provide for exchangeability of such Securities with the Securities issued hereunder in fully registered form and to make all appropriate changes for such purpose;
- (d) to cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental indenture which may be defective or inconsistent with any other provision contained herein or in any supplemental indenture, or to make such other provisions in regard to matters or questions arising under this Indenture; provided that any such action shall not adversely affect the interests of the holders of the Securities;
- (e) to add to, delete from, or revise the terms of Securities of any series as permitted by Section 2.01 and 2.03, including, without limitation, any terms relating to the issuance, exchange, registration or transfer of Securities issued in whole or in part in the form of one or more Global Securities and the payment of any principal thereof, or interest or premium, if any, thereon;
- (f) to evidence and provide for the acceptance of appointment hereunder by a successor trustee with respect to the Securities of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one trustee, pursuant to the requirements of Section 6.11;
- (g) to provide for uncertificated Securities in addition to or in place of certificated Securities;
- (h) to make any change that does not adversely affect the rights of any Securityholder in any material respect; or
- (i) to provide for the issuance of and establish the form and terms and conditions of the Securities of any series, to establish the form of any certifications required to be furnished pursuant to the terms of this Indenture or any series of Securities, or to add to the rights of the holders of any series of Securities.

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

46

Any supplemental indenture authorized by the provisions of this Section 9.01 may be executed by the Company and the Trustee without the consent of the holders of any of the Securities at the time outstanding, notwithstanding any of the provisions of Section 9.02.

SECTION 9.02. Supplemental Indentures with Consent of Securityholders.

With the consent (evidenced as provided in Section 7.01) of the holders of not less than a majority in aggregate principal amount of the Securities at the time outstanding of all series affected by such supplemental indenture (voting as a class), the Company and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act then in effect) for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental indenture or of modifying in any manner the rights of the holders of the Securities of each series so affected; provided, however, that no such supplemental indenture shall without the consent of the holders of each security then outstanding and affected thereby (i) extend the fixed maturity of any Security of any series (except as

set forth in the terms of the particular series of Securities), or reduce the rate or extend the time of payment of interest thereon, or reduce the principal amount thereof or any premium thereon, or reduce any amount payable on redemption thereof or make the principal thereof or any interest or premium thereon payable in any coin or currency other than that provided in the Securities, or reduce the amount of the principal of an Original Issue Discount Security that would be due and payable upon an acceleration of the maturity thereof pursuant to Section 5.01 or the amount thereof provable in bankruptcy pursuant to Section 5.02, or impair or affect the right of any Securityholder to institute suit for payment thereof or the right of repayment, if any, at the option of the holder, without the consent of the holder of each Security so affected, or (ii) reduce the aforesaid percentage of Securities the holders of which are required to consent to any such supplemental indenture, without the consent of the holders of each Security then affected provided, further, that if the Securities of such series are held by a Trust or a trustee of such trust, such supplemental indenture shall not be effective until the holders of a majority in liquidation preference of Trust Securities of the applicable Trust shall have consented to such supplemental indenture; provided further, that if the consent of the Holder of each outstanding Security is required, such supplemental indenture shall not be effective until each holder of the Trust Securities of the applicable Trust shall have consented to such supplemental indenture.

A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Securities, or which modifies the rights of Securityholders of such series with respect to such covenant or provision, shall be deemed not to affect the rights under this Indenture or the Securityholders of any other series.

Upon the request of the Company accompanied by a copy of a Board Resolution authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of Securityholders as aforesaid, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture. The Trustee may receive an Opinion of Counsel as conclusive evidence that any

47

supplemental indenture executed pursuant to this Article 9 is authorized or permitted by, and conforms to, the terms of this Article 9 and that it is proper for the Trustee under the provisions of this Article 9 to join in the execution thereof.

Promptly after the execution by the Company and the Trustee of any supplemental indenture pursuant to the provisions of this Section, the Trustee shall transmit by mail, first class postage prepaid, a notice, prepared by the Company, setting forth in general terms the substance of such supplemental indenture, to the Securityholders of all series affected thereby as their names and addresses appear upon the Security register. Any failure of the Trustee to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture.

It shall not be necessary for the consent of the Securityholders under this Section 9.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

SECTION 9.03. Compliance with Trust Indenture Act; Effect of Supplemental Indentures.

Any supplemental indenture executed pursuant to the provisions of this Article 9 shall comply with the Trust Indenture Act, as then in effect. Upon the execution of any supplemental indenture pursuant to the provisions of this Article 9, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the holders of Securities of each series affected thereby shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

SECTION 9.04. Notation on Securities.

Securities of any series authenticated and delivered after the execution of any supplemental indenture affecting such series pursuant to the provisions of this Article 9 may bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company or the Trustee shall so determine, new Securities of any series so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any

modification of this Indenture contained in any such supplemental indenture may be prepared and executed by the Company, authenticated by the Trustee or the Authenticating Agent and delivered in exchange for the Securities of any series then outstanding.

SECTION 9.05. Evidence of Compliance of Supplemental Indenture to be Furnished Trustee.

The Trustee, subject to the provisions of Sections 6.01 and 6.02, may receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant hereto complies with the requirements of this Article 9.

48

ARTICLE 10

CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE.

SECTION 10.01. Company May Consolidate, etc., on Certain Terms.

The Company covenants that it will not merge into or consolidate with any other corporation or sell or convey all or substantially all of its assets to any person, firm or corporation, unless (1) either the Company shall be the continuing corporation, or the successor corporation (if other than the Company) shall be a corporation organized and existing under the laws of the United States of America or a state thereof or the District of Columbia and such corporation shall expressly assume the due and punctual payment of the principal of (and premium, if any, on) and any interest on all Securities, according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of this Indenture to be performed by the Company by supplemental indenture satisfactory to the Trustee, executed and delivered to the Trustee by such corporation, and (2) the Company or such successor corporation, as the case may be, shall not, immediately after such merger or consolidation, or such sale or conveyance, be in default in the performance of any such covenant or condition.

SECTION 10.02. Successor Corporation to be Substituted for Company.

In case of any such consolidation, merger, conveyance or transfer and upon any required assumption by the successor corporation, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the due and punctual payment of the principal of and premium, if any, and interest on all of the Securities and the due and punctual performance and observance of all of the covenants and conditions of this Indenture or the applicable Declaration to be performed or observed by the Company, such successor corporation shall succeed to and be substituted for the Company, with the same effect as if it had been named herein as the party of the first part, and the Company thereupon shall be relieved of any further liability or obligation hereunder or upon the Securities. Such successor corporation thereupon may cause to be signed, and may issue either in its own name or in the name of the Company, any or all of the Securities issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee or the Authenticating Agent; and, upon the order of such successor corporation instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee or the Authenticating Agent shall authenticate and deliver any Securities which previously shall have been signed and delivered by the officers of the Company to the Trustee or the Authenticating Agent for authentication, and any Securities which such successor corporation thereafter shall cause to be signed and delivered to the Trustee or the Authenticating Agent for that purpose. All the Securities so issued shall in all respects have the same legal rank and benefit under this Indenture as the Securities theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Indentures had been issued at the date of the execution hereof.

49

SECTION 10.03. Opinion of Counsel to be Given Trustee.

The Trustee, subject to the provisions of Sections 6.01 and 6.02, may receive an Opinion of Counsel as conclusive evidence that any consolidation, merger, conveyance or transfer, and any assumption, permitted or required by the terms of this Article 10 complies with the provisions of this Article 10.

ARTICLE 11

SATISFACTION AND DISCHARGE OF INDENTURE; DEFEASANCE.

SECTION 11.01. Discharge of Indenture.

When (a) the Company shall deliver to the Trustee for cancellation all Securities theretofore authenticated (other than any Securities which shall have

been destroyed, lost or stolen and which shall have been replaced or paid as provided in Section 2.08) and not theretofore canceled, or (b) all the Securities not theretofore canceled or delivered to the Trustee for cancellation shall have become due and payable, or are by their terms to become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption, and the Company shall deposit with the Trustee, in trust, funds sufficient to pay at maturity or upon redemption all of the Securities (other than any Securities which shall have been destroyed, lost or stolen and which shall have been replaced or paid as provided in Section 2.08) not theretofore canceled or delivered to the Trustee for cancellation, including principal and premium, if any, and interest due or to become due to such date of maturity or redemption date, as the case may be, but excluding, however, the amount of any moneys for the payment of principal of, and premium, if any, or interest on the Securities (1) theretofore repaid to the Company in accordance with the provisions of Section 11.04, or (2) paid to any state or to the District of Columbia pursuant to its unclaimed property or similar laws, and if in either case the Company shall also pay or cause to be paid all other sums payable hereunder by the Company, then this Indenture shall cease to be of further effect except that the provisions of Sections 6.06, 6.10, 11.04 and 11.05 (with respect to the obligations of the Trustee) hereof shall survive until such Securities shall mature and be paid. Thereafter, Sections 6.06 and 11.04 shall survive, and the Trustee, on demand of the Company accompanied by any Officers' Certificate and an Opinion of Counsel and at the cost and expense of the Company, shall execute proper instruments acknowledging satisfaction of and discharging this Indenture, the Company, however, hereby agreeing to reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred by the Trustee in connection with this Indenture or the Securities.

SECTION 11.02. Deposited Moneys and U.S. Government Obligations to be Held in Trust by Trustee.

Subject to the provisions of the last paragraph of Section 3.04, all moneys and U.S. Government Obligations deposited with the Trustee pursuant to Sections 11.01 or 11.05 shall be held in trust and applied by it to the payment, either directly or through any paying agent (including the Company if acting as its own paying agent), to the holders of the particular Securities for the payment of which such moneys or U.S. Government Obligations have been

50

deposited with the Trustee, of all sums due and to become due thereon for principal, premium, if any, and interest.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the U.S. Government Obligations deposited pursuant to Section 11.05 or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the holders of outstanding Securities.

SECTION 11.03. Paying Agent to Repay Moneys Held.

In connection with the satisfaction and discharge of this Indenture with respect to the Securities and the payment of all amounts due to the Trustee under Section 6.06, all moneys with respect to such Securities then held by any paying agent under the provisions of this Indenture shall, upon demand of the Company, be repaid to it or paid to the Trustee, and thereupon such paying agent shall be released from all further liability with respect to such moneys.

SECTION 11.04. Return of Unclaimed Moneys.

Subject to the terms of any state escheat or unclaimed property laws, any moneys deposited with or paid to the Trustee or any paying agent for payment of the principal of, and premium, if any, or interest on Securities and not applied but remaining unclaimed by the holders of Securities for three years after the date upon which the principal of, and premium, if any, or interest on such Securities, as the case may be, shall have become due and payable, shall be repaid to the Company by the Trustee or such paying agent on written demand; and the holder of any of the Securities shall thereafter, as an unsecured general creditor, look only to the Company for any payment which such holder may be entitled to collect and all liability of the Trustee or such paying agent with respect to such moneys shall thereupon cease.

SECTION 11.05. Defeasance and Discharge Upon Deposit of Moneys or U.S. Government Obligations.

The Company shall be deemed to have been Discharged (as defined below) from its respective obligations with respect to any series of Securities on the 91st day after the applicable conditions set forth below have been satisfied with respect to that series of Securities:

- (1) the Company shall have deposited or caused to be deposited irrevocably with the Trustee or the Defeasance Agent (as defined below) as trust funds in trust, specifically pledged as security

for, and dedicated solely to, the benefit of the holders of the Securities of such series (i) money in an amount, or (ii) U.S. Government Obligations which through the payment of interest and principal in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment, money in an amount, or (iii) a combination of (i) and (ii), sufficient, in the opinion (with respect to (ii) and (iii)) of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee and the Defeasance Agent, if any, to pay and discharge each installment of principal (including any mandatory sinking fund payments) of, and interest and premium, if any, on, the outstanding Securities of such

51

series on the dates such installments of principal, interest or premium are due;

- (2) if the Securities of such series are then listed on any national securities exchange, the Company shall have delivered to the Trustee and the Defeasance Agent, if any, an Opinion of Counsel to the effect that the exercise of the option under this Section 11.05 would not cause such Securities to be delisted from such exchange;
- (3) no Event of Default or event which with notice or lapse of time would become an Event of Default with respect to the Securities of such series shall have occurred and be continuing on the date of such deposit; and
- (4) the Company shall have delivered to the Trustee and the Defeasance Agent, if any, an Opinion of Counsel to the effect that holders of the Securities of such series will not recognize income, gain or loss for United States federal income tax purposes as a result of the exercise of the option under this Section 11.05 and will be subject to United States federal income tax on the same amount and in the same manner and at the same times as would have been the case if such option had not been exercised.

"Discharged" means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by, and obligations under, the Securities of such series and to have satisfied all the obligations under this Indenture relating to the Securities of such series (and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging the same), except (A) the rights of holders of Securities of such series to receive, from the trust fund described in clause (1) above, payment of the principal of and the interest and premium, if any, on such Securities when such payments are due; (B) the Company's obligations with respect to such Securities under Sections 2.07, 2.08, 3.02 and 3.04; (C) this Section 11.05; and (D) the rights, powers, trusts, duties and immunities of the Trustee hereunder. Following a defeasance, payment of the Securities may not be accelerated because of an Event of Default.

"Defeasance Agent" means another financial institution which is eligible to act as Trustee hereunder and which assumes all of the obligations of the Trustee necessary to enable the Trustee to act hereunder. In the event a Defeasance Agent is appointed pursuant to this section, the following conditions shall apply:

1. The Trustee shall have approval rights over the document appointing such Defeasance Agent and the document setting forth such Defeasance Agent's rights and responsibilities;
2. The Defeasance Agent shall provide verification to the Trustee acknowledging receipt of sufficient money and/or U. S. Government Obligations to meet the applicable conditions set forth in this Section 11.05;
3. The Trustee shall determine whether the Company shall be deemed to have been Discharged from its respective obligations with respect to any series of Securities.

52

ARTICLE 12

IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS.

SECTION 12.01. Indenture and Securities Solely Corporate Obligations.

No recourse for the payment of the principal of or premium, if any, or

interest on any Security, or for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company in this Indenture or in any supplemental indenture, or in any Security, or because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, officer or director, as such, past, present or future, of the Company or of any successor corporation of the Company, either directly or through the Company or any successor corporation of the Company, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Securities.

ARTICLE 13

MISCELLANEOUS PROVISIONS.

SECTION 13.01. Successors.

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

SECTION 13.02. Official Acts by Successor Corporation.

Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or officer of the Company shall and may be done and performed with like force and effect by the like board, committee or officer of any corporation that shall at the time be the lawful sole successor of the Company.

SECTION 13.03. Surrender of Company Powers.

The Company by instrument in writing executed by appropriate authority of its Board of Directors and delivered to the Trustee may surrender any of the powers reserved to the Company, and thereupon such power so surrendered shall terminate both as to the Company, as the case may be, and as to any successor corporation.

53

SECTION 13.04. Addresses for Notices, etc.

Any notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the holders of Securities on the Company may be given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed (until another address is filed by the Company with the Trustee for the purpose) to the Company, Bank Of America Corporation, Bank Of America Corporate Center, NC1-007-23-01, 100 North Tryon Street, Charlotte, North Carolina 28255, Attention: Corporate Treasury. Any notice, direction, request or demand by any Securityholder to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if given or made in writing at the office of the Trustee, addressed to the Trustee, The Bank of New York, 101 Barclay Street, 21 West, New York, New York 10286, Attention: Corporate Trust Trustee Administration.

SECTION 13.05. Governing Law.

This Indenture and each Security shall be deemed to be a contract made under the laws of the State of New York, and for all purposes shall be governed by and construed in accordance with the laws of said State, without regard to conflicts of laws principles thereof.

SECTION 13.06. Evidence of Compliance with Conditions Precedent.

Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture, the Company shall furnish to the Trustee an Officers' Certificate stating that in the opinion of the signers all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Each certificate or opinion of the Company provided for in this Indenture and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Indenture shall include (1) a statement that the person making such certificate or opinion has read such covenant or condition; (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (3) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and (4) a statement as to whether or not, in

the opinion of such person, such condition or covenant has been complied with.

SECTION 13.07. Legal Holidays.

In any case where the date of payment of interest on or principal of the Securities will be in New York, New York or in Charlotte, North Carolina a legal holiday or a day on which banking institutions are authorized or obligated by law, executive order or regulation to close, the payment of such interest on or principal of the Securities need not be made on such date but may be made on the next succeeding Business Day, with the same force and effect as if made on the date of payment and no interest shall accrue for the period from and after such date, except

54

that, if the next Business Day is in the next succeeding calendar year, payment or interest shall be made on the immediately preceding Business Day with the same force and effect.

SECTION 13.08. Trust Indenture Act to Control.

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

SECTION 13.09. Table of Contents, Headings, etc.

The table of contents and the titles and headings of the articles and sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

SECTION 13.10. Execution in Counterparts.

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

SECTION 13.11. Separability.

In case any one or more of the provisions contained in this Indenture or in the Securities of any series (or the Board Resolution or supplemental indenture establishing the series) shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Indenture or of such Securities, but this Indenture and such Securities shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein or therein.

SECTION 13.12. Assignment.

The Company will have the right at all times to assign any of its respective rights or obligations under this Indenture to a direct or indirect wholly owned Subsidiary of the Company, provided that, in the event of any such assignment, the Company, as the case may be, will remain liable for all such obligations. Otherwise, this Indenture may not be assigned by the parties thereto. Subject to the foregoing, the Indenture is binding upon and inures to the benefit of the parties thereto and their respective successors and assigns.

SECTION 13.13. Acknowledgment of Rights.

The Company acknowledges that, with respect to any Securities held by a Trust or a trustee of such trust, if the Property Trustee of such Trust fails to enforce its rights under this Indenture as the holder of the series of Securities held as the assets of such Trust, any holder of Capital Securities may institute legal proceedings directly against the Company to enforce such Property Trustee's rights under this Indenture without first instituting any legal proceedings against such Property Trustee or any other person or entity. Notwithstanding the foregoing, if a Nonpayment has occurred and is continuing, the Company acknowledges that a holder of Capital

55

Securities may directly institute a proceeding for enforcement of payment to such holder of the principal of or interest on the applicable series of Securities having a principal amount equal to the aggregate liquidation amount of the Capital Securities of such holder on or after the respective due date specified in the applicable series of Securities.

REDEMPTION OF SECURITIES

SECTION 14.01. Applicability of Article.

The provisions of this Article shall be applicable to the Securities of any series which are redeemable before their maturity or to any sinking fund for the retirement of Securities of a series except as otherwise specified as contemplated by Section 2.03 for Securities of such series.

SECTION 14.02. Notice of Redemption; Selection of Securities.

In case the Company shall desire to exercise the right to redeem all, or, as the case may be, any part of the Securities of any series in accordance with their terms, it shall fix a date for redemption and shall mail a notice of such redemption at least 30 and not more than 60 days prior to the date fixed for redemption to the holders of Securities of such series so to be redeemed as a whole or in part at their last addresses as the same appear on the Security register. Such mailing shall be by first class mail. The notice if mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the holder receives such notice. In any case, failure to give such notice by mail or any defect in the notice to the holder of any Security of a series designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Security of such series.

Each such notice of redemption shall specify the CUSIP number of the Securities to be redeemed, the date fixed for redemption, the redemption price at which Securities of such series are to be redeemed, the place or places of payment, that payment will be made upon presentation and surrender of such Securities, that interest accrued to the date fixed for redemption will be paid as specified in said notice, and that on and after said date interest thereon or on the portions thereof to be redeemed will cease to accrue. If less than all the Securities of such series are to be redeemed the notice of redemption shall specify the numbers of the Securities of that series to be redeemed. In case any Security of a series is to be redeemed in part only, the notice of redemption shall state the portion of the principal amount thereof to be redeemed and shall state that on and after the date fixed for redemption, upon surrender of such Security, a new Security or Securities of that series in principal amount equal to the unredeemed portion thereof will be issued.

Prior to the redemption date specified in the notice of redemption given as provided in this Section, the Company will deposit with the Trustee or with one or more paying agents an amount of money sufficient to redeem on the redemption date all the Securities so called for redemption at the appropriate redemption price, together with accrued interest to the date fixed for redemption.

56

If all, or less than all, the Securities of a series are to be redeemed, the Company will give the Trustee notice not less than 45 or 60 days, respectively, prior to the redemption date as to the aggregate principal amount of Securities of that series to be redeemed; and, if less than all, Securities of a series are held in the form of a Global Security, the Trustee shall select, in such manner as in its sole discretion it shall deem appropriate and fair, the Securities of that series or portions thereof (in integral multiples of \$25, except as otherwise set forth in the applicable form of Security, a Board Resolution or an indenture supplemental hereto) to be redeemed.

SECTION 14.03. Payment of Securities Called for Redemption.

If notice of redemption has been given as provided in Section 14.02, the Securities or portions of Securities of the series with respect to which such notice has been given shall become due and payable on the date and at the place or places stated in such notice at the applicable redemption price, together with interest accrued to the date fixed for redemption, and on and after said date (unless the Company shall default in the payment of such Securities at the redemption price, together with interest accrued to said date) interest on the Securities or portions of Securities of any series so called for redemption shall cease to accrue. On presentation and surrender of such Securities at a place of payment specified in said notice, the said Securities or the specified portions thereof shall be paid and redeemed by the Company at the applicable redemption price, together with interest accrued thereon to the date fixed for redemption.

Upon presentation of any Security of any series redeemed in part only, the Company shall execute and the Trustee shall authenticate and make available for delivery to the holder thereof, at the expense of the Company, a new Security or Securities of such series of authorized denominations, in principal amount equal to the unredeemed portion of the Security so presented.

ARTICLE 15

SUBORDINATION OF SECURITIES

SECTION 15.01. Agreement to Subordinate.

The Company covenants and agrees, and each holder of Securities issued hereunder and under any supplemental indenture or by any resolutions by the Board of Directors ("Additional Provisions") by such Securityholder's acceptance thereof likewise covenants and agrees, that all Securities shall be issued subject to the provisions of this Article 15; and each holder of a Security, whether upon original issue or upon transfer or assignment thereof, accepts and agrees to be bound by such provisions.

The payment by the Company of the principal of, premium, if any, and interest on all Securities issued hereunder and under any Additional Provisions shall, to the extent and in the manner hereinafter set forth, be subordinated and junior in right of payment to the prior payment in full of all Senior Obligations of the Company, whether outstanding at the date of this Indenture or thereafter incurred.

57

No provision of this Article 15 shall prevent the occurrence of any default or Event of Default hereunder.

SECTION 15.02. Default on Senior Obligations.

In the event and during the continuation of any default by the Company in the payment of principal, premium, interest or any other payment due on any Senior Obligations of the Company, as the case may be, or in the event that the maturity of any Senior Obligations of the Company, as the case may be, has been accelerated because of a default, then, in either case, no payment shall be made by the Company with respect to the principal (including redemption payments) of, or premium, if any, or interest on the Securities.

Notwithstanding the foregoing, if any payment is received by the Trustee when such payment is prohibited by the preceding paragraph of this Section 15.02, such payment shall be held in trust for the benefit of, and shall be paid over or delivered to, the holders of Senior Obligations or their respective representatives, or to the trustee or trustees under any indenture pursuant to which any of such Senior Obligations may have been issued, as their respective interests may appear, but only to the extent that the holders of the Senior Obligations (or their representative or representatives or a trustee) notify the Trustee in writing within 90 days of such payment of the amounts then due and owing on the Senior Obligations and only the amounts specified in such notice to the Trustee shall be paid to the holders of Senior Obligations.

SECTION 15.03. Liquidation; Dissolution; Bankruptcy.

Upon any payment by the Company or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to creditors upon any dissolution or winding-up or liquidation or reorganization of the Company, whether voluntary or involuntary or in bankruptcy, insolvency, receivership or other proceedings, all amounts due upon all Senior Obligations of the Company shall first be paid in full, or payment thereof provided for in money in accordance with its terms, before any payment is made by the Company on account of the principal (and premium, if any) or interest on the Securities; and upon any such dissolution or winding-up or liquidation or reorganization, any payment by the Company, or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to which the Securityholders or the Trustee would be entitled to receive from the Company, except for the provisions of this Article 15, shall be paid by the Company or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other Person making such payment or distribution, or by the Securityholders or by the Trustee under the Indenture if received by them or it, directly to the holders of Senior Obligations of the Company (pro rata to such holders on the basis of the

--- ----
respective amounts of Senior Obligations held by such holders, as calculated by the Company) or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing such Senior Obligations may have been issued, as their respective interests may appear, to the extent necessary to pay such Senior Obligations in full, in money or money's worth, after giving effect to any concurrent payment or distribution to or for the holders of such Senior Obligations, before any payment or distribution is made to the Securityholders or to the Trustee.

58

In the event that, notwithstanding the foregoing, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, prohibited by the foregoing, shall be received by the Trustee before all Senior Obligations of the Company is paid in full, or provision is made for such payment in money in accordance with its terms, such payment or distribution shall be held in trust for the benefit of and shall be paid over or delivered to the holders of such Senior Obligations or their

representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing such Senior Obligations may have been issued, and their respective interests may appear, as calculated by the Company, for application to the payment of all Senior Obligations of the Company, as the case may be, remaining unpaid to the extent necessary to pay such Senior Obligations in full in money in accordance with its terms, after giving effect to any concurrent payment or distribution to or for the benefit of the holders of such Senior Obligations.

For purposes of this Article 15, the words "cash, property or securities" shall not be deemed to include shares of stock of the Company as reorganized or readjusted, or securities of the Company or any other corporation provided for by a plan of reorganization or readjustment, the payment of which is subordinated at least to the extent provided in this Article 15 with respect to the Securities to the payment of all Senior Obligations of the Company, as the case may be, that may at the time be outstanding, provided that (i) such Senior Obligations is assumed by the new corporation, if any, resulting from any such reorganization or readjustment, and (ii) the rights of the holders of such Senior Obligations are not, without the consent of such holders, altered by such reorganization or readjustment. The consolidation of the Company with, or the merger of the Company into, another corporation or the liquidation or dissolution of the Company following the conveyance or transfer of its property as an entirety, or substantially as an entirety, to another corporation upon the terms and conditions provided for in Article 10 of this Indenture shall not be deemed a dissolution, winding-up, liquidation or reorganization for the purposes of this Section 15.03 if such other corporation shall, as a part of such consolidation, merger, conveyance or transfer, comply with the conditions stated in Article 10 of this Indenture. Nothing in Section 15.02 or in this Section 15.03 shall apply to claims of, or payments to, the Trustee under or pursuant to Section 6.05 of this Indenture.

SECTION 15.04. Subrogation.

Subject to the payment in full of all Senior Obligations of the Company, the rights of the Securityholders shall be subrogated to the rights of the holders of such Senior Obligations to receive payments or distributions of cash, property or securities of the Company, as the case may be, applicable to such Senior Obligations until the principal of (and premium, if any) and interest on the Senior Obligation are paid in full; and, for the purposes of such subrogation, no payments or distributions to the holders of such Senior Obligations of any cash, property or securities to which the Securityholders or the Trustee would be entitled except for the provisions of this Article 15, and no payment over pursuant to the provisions of this Article 15 to or for the benefit of the holders of such Senior Obligations by Securityholders or the Trustee, shall, as between the Company, its creditors other than holders of Senior Obligations of the Company, and the holders of the Securities, be deemed to be a payment by the Company to or on account of such Senior Obligations. It is understood that the provisions of this Article 15 are and are intended solely for the purposes of defining the relative rights of the holders of the Securities, on the one hand, and the holders of such Senior Obligations on the other hand.

59

Nothing contained in this Article 15 or elsewhere in this Indenture or in the Securities is intended to or shall impair, as between the Company, its creditors other than the holders of Senior Obligations of the Company, and the holders of the Securities, the obligation of the Company, which is absolute and unconditional, to pay to the holders of the Securities the principal of (and premium, if any) and interest on the Securities as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of the holders of the Securities and creditors of the Company, as the case may be, other than the holders of Senior Obligations of the Company, as the case may be, nor shall anything herein or therein prevent the Trustee or the holder of any Security from exercising all remedies otherwise permitted by applicable law upon default under the Indenture, subject to the rights, if any, under this Article 15 of the holders of such Senior Obligations in respect of cash, property or securities of the Company, as the case may be, received upon the exercise of any such remedy.

Upon any payment or distribution of assets of the Company referred to in this Article 15, the Trustee, subject to the provisions of Article 6 of this Indenture, and the Securityholders shall be entitled to conclusively rely upon any order or decree made by any court of competent jurisdiction in which such dissolution, winding-up, liquidation or reorganization proceedings are pending, or a certificate of the receiver, trustee in bankruptcy, liquidation trustee, agent or other Person making such payment or distribution, delivered to the Trustee or to the Securityholders, for the purposes of ascertaining the Persons entitled to participate in such distribution, the holders of Senior Obligations and other indebtedness of the Company, as the case may be, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article 15.

SECTION 15.05. Trustee to Effectuate Subordination.

Each Securityholder by such Securityholder's acceptance thereof authorizes and directs the Trustee on such Securityholder's behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article 15 and appoints the Trustee such Securityholder's attorney-in-fact for any and all such purposes.

SECTION 15.06. Notice by the Company.

The Company shall give prompt written notice to a Responsible Officer of the Trustee of any fact known to the Company that would prohibit the making of any payment of monies to or by the Trustee in respect of the Securities pursuant to the provisions of this Article 15. Notwithstanding the provisions of this Article 15 or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts that would prohibit the making of any payment of monies to or by the Trustee in respect of the Securities pursuant to the provisions of this Article 15, unless and until a Responsible Officer of the Trustee shall have received written notice thereof from the Company or a holder or holders of Senior Obligations or from any trustee therefor; and before the receipt of any such written notice, the Trustee, subject to the provisions of Article 6 of this Indenture, shall be entitled in all respects to assume that no such facts exist; provided, however,

that if the Trustee shall not have received the notice provided for in this Section 15.06 at least two Business Days prior to the date upon which by the terms hereof any money may become payable for any purpose (including, without limitation, the

60

payment of the principal of (or premium, if any) or interest on any Debenture), then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such money and to apply the same to the purposes for which they were received, and shall not be affected by any notice to the contrary that may be received by it within two Business Days prior to such date.

The Trustee, subject to the provisions of Article 6 of this Indenture, shall be entitled to conclusively rely on the delivery to it of a written notice by a Person representing himself to be a holder of Senior Obligations of the Company, as the case may be (or a trustee on behalf of such holder), to establish that such notice has been given by a holder of such Senior Obligations or a trustee on behalf of any such holder or holders. In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of such Senior Obligations to participate in any payment or distribution pursuant to this Article 15, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of such Senior Obligations held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article 15, and, if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

SECTION 15.07. Rights of the Trustee; Holders of Senior Obligations.

The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article 15 in respect of any Senior Obligations at any time held by it, to the same extent as any other holder of Senior Obligations, and nothing in this Indenture or any Additional Provisions shall deprive the Trustee of any of its rights as such holder.

With respect to the holders of Senior Obligations of the Company, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Article 15, and no implied covenants or obligations with respect to the holders of such Senior Obligations shall be read into this Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of such Senior Obligations and, subject to the provisions of Article 6 of this Indenture, the Trustee shall not be liable to any holder of such Senior Obligations if it shall pay over or deliver to Securityholders, the Company or any other Person money or assets to which any holder of such Senior Obligations shall be entitled by virtue of this Article 15 or otherwise.

Nothing in this Article 15 shall apply to claims of, or payments to, the Trustee under or pursuant to Section 6.06.

SECTION 15.08. Subordination May Not Be Impaired.

No right of any present or future holder of any Senior Obligations of the Company to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company, as the case may be, or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company, as

the case may be, with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof that any such holder may have or otherwise be charged with.

Without in any way limiting the generality of the foregoing paragraph, the holders of Senior Obligations of the Company may, at any time and from time to time, without the consent of or notice to the Trustee or the Securityholders, without incurring responsibility to the Securityholders and without impairing or releasing the subordination provided in this Article 15 or the obligations hereunder of the holders of the Securities to the holders of such Senior Obligations, do any one or more of the following: (i) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, such Senior Obligations, or otherwise amend or supplement in any manner such Senior Obligations or any instrument evidencing the same or any agreement under which such Senior Obligations is outstanding; (ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing such Senior Obligations; (iii) release any Person liable in any manner for the collection of such Senior Obligations; and (iv) exercise or refrain from exercising any rights against the Company, as the case may be, and any other Person.

The Bank of New York hereby accepts the trusts in this Indenture declared and provided, upon the terms and conditions hereinabove set forth.

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

BANK OF AMERICA CORPORATION

By /s/ Karen A. Gosnell

Name: Karen A. Gosnell
Title: Senior Vice President

THE BANK OF NEW YORK,
as Trustee

By /s/ Derek Kettel

Name: Derek Kettel
Title: Agent

CAPITAL SECURITIES GUARANTEE AGREEMENT

BAC Capital Trust [__]

Dated as of [_____, ____]

CROSS-REFERENCE TABLE*

Section of Trust Indenture Act of 1939, as amended -----	Section of Declaration -----
310 (a)	4.1 (a)
310 (c)	Inapplicable
311 (c)	Inapplicable
312 (a)	2.2 (a)
312 (b)	2.2 (b)
313	2.3
314 (a)	2.4
314 (b)	Inapplicable
314 (c)	2.5
314 (d)	Inapplicable
314 (f)	Inapplicable
315 (a)	3.1 (d)
315 (c)	3.1 (c)
315 (d)	3.1 (d)

* This Cross-Reference Table does not constitute part of the Capital Securities Guarantee and shall not affect the interpretation of any of its terms or provisions.

TABLE OF CONTENTS

<TABLE>		
<S>		<C>
	ARTICLE 1 DEFINITIONS AND INTERPRETATION	
SECTION 1.1	Definitions and Interpretation.....	1
	ARTICLE 2 TRUST INDENTURE ACT	
SECTION 2.1	Trust Indenture Act; Application.....	5
SECTION 2.2	Lists of Holders of Securities.....	5
SECTION 2.3	Reports by the Capital Securities Guarantee Trustee.....	5
SECTION 2.4	Periodic Reports to Capital Securities Guarantee Trustee.....	5
SECTION 2.5	Evidence of Compliance with Conditions Precedent.....	5
SECTION 2.6	Events of Default; Waiver.....	6
SECTION 2.7	Event of Default; Notice.....	6
SECTION 2.8	Conflicting Interests.....	6
	ARTICLE 3 POWERS, DUTIES AND RIGHTS OF CAPITAL SECURITIES GUARANTEE TRUSTEE	
SECTION 3.1	Powers and Duties of the Capital Securities Guarantee Trustee.....	6
SECTION 3.2	Certain Rights of Capital Securities Guarantee Trustee.....	8
SECTION 3.3	Not Responsible for Recitals or Issuance of Capital Securities Guarantee.....	10
	ARTICLE 4 CAPITAL SECURITIES GUARANTEE TRUSTEE	
SECTION 4.1	Capital Securities Guarantee Trustee; Eligibility.....	10
SECTION 4.2	Appointment, Removal and Resignation of Capital Securities Guarantee Trustee.....	11
	ARTICLE 5 GUARANTEE	
SECTION 5.1	Guarantee.....	12
SECTION 5.2	Waiver of Notice and Demand.....	12
SECTION 5.3	Obligations Not Affected.....	12
SECTION 5.4	Rights of Holders.....	13

SECTION 5.5	Guarantee of Payment.....	13
SECTION 5.6	Subrogation.....	13
SECTION 5.7	Independent Obligations.....	14

ARTICLE 6
LIMITATION OF TRANSACTIONS; SUBORDINATION

SECTION 6.1	Limitation of Transactions.....	14
SECTION 6.2	Ranking.....	14

ARTICLE 7
TERMINATION

SECTION 7.1	Termination.....	15
-------------	------------------	----

i

TABLE OF CONTENTS

ARTICLE 8 INDEMNIFICATION		<C>
SECTION 8.1	Exculpation.....	15
SECTION 8.2	Indemnification.....	15
ARTICLE 9 MISCELLANEOUS		
SECTION 9.1	Successors and Assigns.....	16
SECTION 9.2	Amendments.....	16
SECTION 9.3	Notices.....	16
SECTION 9.4	Benefit.....	17
SECTION 9.5	Governing Law.....	17

ii

CAPITAL SECURITIES GUARANTEE AGREEMENT

This GUARANTEE AGREEMENT (the "Capital Securities Guarantee"), dated as of [_____, ____], is executed and delivered by BANK OF AMERICA CORPORATION, a Delaware corporation (the "Guarantor"), and THE BANK OF NEW YORK, a New York banking corporation, as trustee (the "Capital Securities Guarantee Trustee"), for the benefit of the Holders (as defined herein) from time to time of the Capital Securities (as defined herein) of BAC Capital Trust [___], a Delaware statutory business trust (the "Issuer").

WHEREAS, pursuant to an Amended and Restated Declaration of Trust (the "Declaration"), dated as of [_____, ____], among the trustees of the Issuer named therein, the Guarantor, as sponsor, and the holders from time to time of undivided beneficial interests in the assets of the Issuer, the Issuer is issuing on the date hereof _____ Capital Securities representing undivided preferred beneficial interests in the assets of the Issuer, having an aggregate liquidation amount of \$[___], designated the ___% Capital Securities (the "Capital Securities");

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

WHEREAS, the Guarantor also is executing and delivering a guarantee agreement (the "Common Securities Guarantee") for the benefit of the holders of the Common Securities (as defined herein);

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

ARTICLE 1

DEFINITIONS AND INTERPRETATION

SECTION 1.1	Definitions and Interpretation.
-------------	---------------------------------

In this Capital Securities Guarantee, unless the context

otherwise requires:

- (a) Capitalized terms used in this Capital Securities Guarantee but not defined in the preamble above have the respective meanings assigned to them in this Section 1.1;
- (b) terms defined in the Declaration as at the date of execution of this Capital Securities Guarantee have the same meaning when used in this Capital Securities Guarantee;

1

- (c) a term defined anywhere in this Capital Securities Guarantee has the same meaning throughout;
- (d) all references to "the Capital Securities Guarantee" or "this Capital Securities Guarantee" are to this Capital Securities Guarantee as modified, supplemented or amended from time to time;
- (e) all references in this Capital Securities Guarantee to Articles and Sections are to Articles and Sections of this Capital Securities Guarantee, unless otherwise specified;
- (f) a term defined in the Trust Indenture Act has the same meaning when used in this Capital Securities Guarantee, unless otherwise defined in this Capital Securities Guarantee or unless the context otherwise requires; and
- (g) a reference to the singular includes the plural and vice versa.

"Affiliate" has the same meaning as given to that term in Rule

405 of the Securities Act of 1933, as amended, or any successor rule thereunder.

"Authorized Officer" means the Chief Executive Officer,

President, Chief Financial Officer, any Vice President, Treasurer, Assistant Treasurer, Associate General Counsel or other person authorized to bind a person.

"Business Day" means any day other than a day on which federal

or state banking institutions in New York, New York or Charlotte, North Carolina are authorized or obligated by law, executive order or regulation to close.

"Capital Securities Guarantee Trustee" means The Bank of New

York, a New York banking corporation, until a Successor Capital Securities Guarantee Trustee has been appointed and has accepted such appointment pursuant to the terms of this Capital Securities Guarantee and thereafter means each such Successor Capital Securities Guarantee Trustee.

"Capital Securities" means the total number of ___% Capital

Securities (liquidation amount \$[___] per Capital Security) issued pursuant to the Declaration representing undivided preferred beneficial interests in the assets of the Issuer.

"Common Securities" means the securities representing

undivided common beneficial interests in the assets of the Issuer.

"Corporate Trust Office" means the office of the Capital

Securities Guarantee Trustee at which the corporate trust business of the Capital Securities Guarantee Trustee shall, at any particular time, be principally administered, which office at the date of execution of this Agreement is located at 101 Barclay Street, 21 West, New York, New York 10286.

"Covered Person" means any Holder or beneficial owner of

Capital Securities.

2

"Event of Default" means a default by the Guarantor on any of

its payments or other obligations under this Capital Securities Guarantee.

"Guarantee Payments" means the following payments or

distributions, without duplication, with respect to the Capital Securities, to the extent not paid or made by the Issuer: (i) any accrued and unpaid Distributions that are required to be paid on such Capital Securities to the extent the Issuer shall have funds available therefor, (ii) the applicable Redemption Price to the extent the Issuer has funds available therefor, with respect to any Capital Securities called for redemption by the Issuer, and (iii) upon a voluntary or involuntary dissolution, winding-up or termination of the Issuer (other than in connection with the distribution of Notes to the Holders in exchange for Capital Securities as provided in the Declaration), the lesser of (a) the aggregate of the liquidation amount and all accrued and unpaid Distributions on the Capital Securities to the date of payment, to the extent the Issuer shall have funds available therefor, and (b) the amount of assets of the Issuer remaining available for distribution to Holders in liquidation of the Issuer (in either case, the "Liquidation Distribution"). If an Event of Default under, and as defined in, the Indenture has occurred and is continuing, the rights of holders of the Common Securities to receive payments under the Common Securities Guarantee are subordinated to the rights of Holders of Capital Securities to receive Guarantee Payments under the Capital Securities Guarantee.

"Holder" shall mean any holder, as registered on the books and

records of the Issuer, of any Capital Securities; provided, however, that in determining whether the holders of the requisite percentage of Capital Securities have given any request, notice, consent or waiver hereunder, "Holder" shall not include the Guarantor or any Affiliate of the Guarantor.

"Indemnified Person" means the Capital Securities Guarantee

Trustee, any Affiliate of the Capital Securities Guarantee Trustee, or any officers, directors, shareholders, members, partners, employees, representatives, nominees, custodians or agents of the Capital Securities Guarantee Trustee.

"Indenture" means the Indenture dated as of October 1, 2001

among the Guarantor (the "Note Issuer") and The Bank of New York, as trustee, together with any Board Resolution (as defined in the Indenture) or any indenture supplemental thereto, pursuant to which certain subordinated debt securities of the Note Issuer are to be issued to the Property Trustee (as defined in the Declaration) of the Issuer.

"Majority in liquidation amount of the Securities" means,

except as provided by the Trust Indenture Act, a vote by Holder(s) of Capital Securities, voting separately as a class, of more than 50% of the liquidation amount (including the stated amount that would be paid on redemption, liquidation, dissolution or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) of all Capital Securities.

"Notes" means the series of junior subordinated debt

securities of the Guarantor designated the ____% Junior Subordinated Deferrable Interest Notes due [____] held by the Property Trustee of the Issuer on behalf of the Trust.

3

"Officers' Certificate" means, with respect to any Person, a

certificate signed by an Authorized Officer of such Person. Any Officers' Certificate delivered with respect to compliance with a condition or covenant provided for in this Capital Securities Guarantee shall include:

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

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

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

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

"Person" means a legal person, including any individual,

corporation, estate, partnership, joint venture, association, joint stock
company, limited liability company, trust, unincorporated association, or
government or any agency or political subdivision thereof, or any other entity
of whatever nature.

"Responsible Officer" means, with respect to the Capital

Securities Guarantee Trustee, any officer within the Corporate Trust Office of
the Capital Securities Guarantee Trustee, including any vice president, any
assistant vice president, any assistant secretary, the treasurer, any assistant
treasurer or other officer of the Corporate Trust Office of the Capital
Securities Guarantee Trustee customarily performing functions similar to those
performed by any of the above designated officers and also means, with respect
to a particular corporate trust matter, any other officer to whom such matter is
referred because of that officer's knowledge of and familiarity with the
particular subject.

"Successor Capital Securities Guarantee Trustee" means a

successor Capital Securities Guarantee Trustee possessing the qualifications to
act as Capital Securities Guarantee Trustee under Section 4.1.

"Trust Indenture Act" means the Trust Indenture Act of 1939,

as amended.

"Trust Securities" means the Common Securities and the Capital

Securities.

4

ARTICLE 2
TRUST INDENTURE ACT

SECTION 2.1 Trust Indenture Act; Application.

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

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

SECTION 2.2 Lists of Holders of Securities.

(a) The Guarantor shall provide the Capital Securities Guarantee
Trustee with a list, in such form as the Capital Securities Guarantee Trustee
may reasonably require, of the names and addresses of the Holders of the Capital
Securities ("List of Holders") as of such date, (i) within 10 days after each
record date, and (ii) at any other time within 30 days of receipt by the
Guarantor of a written request for a List of Holders as of a date no more than
10 days before such List of Holders is given to the Capital Securities Guarantee
Trustee; provided, that the Guarantor shall not be obligated to provide such

List of Holders at any time the List of Holders does not differ from the most
recent List of Holders given to the Capital Securities Guarantee Trustee by the
Guarantor. The Capital Securities Guarantee Trustee may destroy any List of
Holders previously given to it on receipt of a new List of Holders.

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

SECTION 2.3 Reports by the Capital Securities Guarantee Trustee.

Within 60 days after March 31 of each year, the Capital
Securities Guarantee Trustee shall provide to the Holders of the Capital
Securities such reports as are required by Section 313 of the Trust Indenture
Act, if any, in the form and in the manner provided by Section 313 of the Trust
Indenture Act. The Capital Securities Guarantee Trustee also shall comply with
the requirements of Section 313(d) of the Trust Indenture Act.

SECTION 2.4 Periodic Reports to Capital Securities Guarantee Trustee.

The Guarantor shall provide to the Capital Securities Guarantee Trustee such documents, reports and information, if any, as required by Section 314 and the compliance certificate required by Section 314 of the Trust Indenture Act in the form, in the manner and at the times required by Section 314 of the Trust Indenture Act.

SECTION 2.5 Evidence of Compliance with Conditions Precedent.

The Guarantor shall provide to the Capital Securities Guarantee Trustee such evidence of compliance with any conditions precedent, if any, provided for in this Capital

5

Securities Guarantee that relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given by an officer pursuant to Section 314(c)(1) may be given in the form of an Officers' Certificate.

SECTION 2.6 Events of Default; Waiver.

The Holders of a Majority in liquidation amount of Capital Securities may, by vote, on behalf of the Holders of all of the Capital Securities, waive any past Event of Default and its consequences. Upon such waiver, any such Event of Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Capital Securities Guarantee, but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

SECTION 2.7 Event of Default; Notice.

(a) The Capital Securities Guarantee Trustee shall, within 90 days after the occurrence of an Event of Default, transmit by mail, first class postage prepaid, to the Holders of the Capital Securities, notices of all Events of Default actually known to a Responsible Officer of the Capital Securities Guarantee Trustee, unless such defaults have been cured before the giving of such notice, provided, that, the Capital Securities Guarantee Trustee shall be protected in withholding such notice if and so long as a Responsible Officer of the Capital Securities Guarantee Trustee in good faith determines that the withholding of such notice is in the interests of the Holders of the Capital Securities.

(b) The Capital Securities Guarantee Trustee shall not be deemed to have knowledge of any Event of Default unless the Capital Securities Guarantee Trustee shall have received written notice thereof, or unless a Responsible Officer of the Capital Securities Guarantee Trustee charged with the administration of the Declaration shall have obtained actual knowledge thereof.

SECTION 2.8 Conflicting Interests.

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

ARTICLE 3
POWERS, DUTIES AND RIGHTS OF
CAPITAL SECURITIES GUARANTEE TRUSTEE

SECTION 3.1 Powers and Duties of the Capital Securities Guarantee Trustee.

(a) This Capital Securities Guarantee shall be held by the Capital Securities Guarantee Trustee for the benefit of the Holders of the Capital Securities, and the Capital Securities Guarantee Trustee shall not transfer this Capital Securities Guarantee to any Person except a Holder of Capital Securities exercising his or her rights pursuant to Section 5.4(b) or to a Successor Capital Securities Guarantee Trustee on acceptance by such Successor Capital Securities Guarantee Trustee of its appointment to act as Successor Capital Securities Guarantee

6

Trustee. The right, title and interest of the Capital Securities Guarantee Trustee shall automatically vest in any Successor Capital Securities Guarantee Trustee, and such vesting and cessation of title shall be effective whether or not conveyancing documents have been executed and delivered pursuant to the appointment of such Successor Capital Securities Guarantee Trustee.

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

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

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

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

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

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

7

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

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

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

SECTION 3.2 Certain Rights of Capital Securities Guarantee Trustee.

(a) Subject to the provisions of Section 3.1:

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

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

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

(iv) The Capital Securities Guarantee Trustee shall have no duty to see to any recording, filing or registration of any instrument (or any rerecording, refiling or registration thereof).

8

(v) The Capital Securities Guarantee Trustee may consult with counsel of its selection, and the advice or opinion of such counsel with respect to legal matters shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with such advice or opinion. Such counsel may be counsel to the Guarantor or any of its Affiliates and may include any of its employees. The Capital Securities Guarantee Trustee shall have the right at any time to seek instructions concerning the administration of this Capital Securities Guarantee from any court of competent jurisdiction.

(vi) The Capital Securities Guarantee Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Capital Securities Guarantee at the request or direction of any Holder, unless such Holder shall have provided to the Capital Securities Guarantee Trustee such security and indemnity, reasonably satisfactory to the Capital Securities Guarantee Trustee, against the costs, expenses (including attorneys' fees and expenses and the expenses of the Capital Securities Guarantee Trustee's agents, nominees or custodians) and liabilities that might be incurred by it in complying with such request or direction, including such reasonable advances as may be requested by the Capital Securities Guarantee Trustee; provided that, nothing contained in this Section 3.2(a)(vi) shall be taken to relieve the Capital Securities Guarantee Trustee, upon the occurrence of an Event of Default, of its obligation to exercise the rights and powers vested in it by this Capital Securities Guarantee.

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

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

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

(x) Whenever in the administration of this Capital

Securities Guarantee the Capital Securities Guarantee Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder, the Capital

9

Securities Guarantee Trustee (i) may request instructions from the Holders of a Majority in liquidation amount of the Securities, (ii) may refrain from enforcing such remedy or right or taking such other action until such instructions are received, and (iii) shall be protected in conclusively relying on or acting in accordance with such instructions.

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

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

SECTION 3.3 Not Responsible for Recitals or Issuance of Capital Securities

Guarantee.
- -----

The recitals contained in this Capital Securities Guarantee shall be taken as the statements of the Guarantor, and the Capital Securities Guarantee Trustee does not assume any responsibility for their correctness. The Capital Securities Guarantee Trustee makes no representation as to the validity or sufficiency of this Capital Securities Guarantee.

ARTICLE 4
CAPITAL SECURITIES GUARANTEE TRUSTEE

SECTION 4.1 Capital Securities Guarantee Trustee; Eligibility.

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

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

(ii) be a corporation organized and doing business under the laws of the United States of America or any State or Territory thereof or of the District of Columbia, or a corporation or Person permitted by the Securities and Exchange Commission to act as a trustee under the Trust Indenture Act, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000, and subject to supervision or examination by Federal, State, Territorial or District of Columbia authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the supervising or examining authority referred to above, then, for the purposes of this Section 4.1(a)(ii), the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

10

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

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

SECTION 4.2 Appointment, Removal and Resignation of Capital Securities

Guarantee Trustee.
- -----

(a) Subject to Section 4.2(b), the Capital Securities Guarantee Trustee may be appointed or removed without cause at any time by the Guarantor except during an Event of Default.

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

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

(d) If no Successor Capital Securities Guarantee Trustee shall have been appointed and accepted appointment as provided in this Section 4.2 within 60 days after delivery of an instrument of removal or resignation, the Capital Securities Guarantee Trustee resigning or being removed may petition any court of competent jurisdiction for appointment of a Successor Capital Securities Guarantee Trustee. Such court may thereupon, after prescribing such notice, if any, as it may deem proper, appoint a Successor Capital Securities Guarantee Trustee.

(e) No Capital Securities Guarantee Trustee shall be liable for the acts or omissions to act of any Successor Capital Securities Guarantee Trustee.

(f) Upon termination of this Capital Securities Guarantee or removal or resignation of the Capital Securities Guarantee Trustee pursuant to this Section 4.2, the Guarantor shall pay to the Capital Securities Guarantee Trustee all amounts accrued to the date of such termination, removal or resignation.

11

ARTICLE 5
GUARANTEE

SECTION 5.1 Guarantee.

The Guarantor irrevocably and unconditionally agrees to pay in full to the Holders the Guarantee Payments (without duplication of amounts theretofore paid by the Issuer), as and when due, regardless of any defense, right of set-off or counterclaim that the Issuer may have or assert. The Guarantor's obligation to make a Guarantee Payment may be satisfied by direct payment of the required amounts by the Guarantor to the Holders or by causing the Issuer to pay such amounts to the Holders.

SECTION 5.2 Waiver of Notice and Demand.

The Guarantor hereby waives notice of acceptance of this Capital Securities Guarantee and of any liability to which it applies or may apply, presentment, demand for payment, any right to require a proceeding first against the Issuer or any other Person before proceeding against the Guarantor, protest, notice of nonpayment, notice of dishonor, notice of redemption and all other notices and demands.

SECTION 5.3 Obligations Not Affected.

The obligations, covenants, agreements and duties of the Guarantor under this Capital Securities Guarantee shall in no way be affected or impaired by reason of the happening from time to time of any of the following:

(a) the release or waiver, by operation of law or otherwise, of the performance or observance by the Issuer of any express or implied agreement, covenant, term or condition relating to the Capital Securities to be performed or observed by the Issuer;

(b) the extension of time for the payment by the Issuer of all or any portion of the Distributions, Redemption Price, Liquidation Distribution or any other sums payable under the terms of the Capital Securities or the extension of time for the performance of any other obligation under, arising out of, or in connection with, the Capital Securities (other than an extension of time for payment of Distributions, Redemption Price, Liquidation Distribution or other sum payable that results from the extension of any interest payment period on the Notes or any extension of the maturity date of the Notes permitted by the

Indenture);

(c) any failure, omission, delay or lack of diligence on the part of the Holders to enforce, assert or exercise any right, privilege, power or remedy conferred on the Holders pursuant to the terms of the Capital Securities, or any action on the part of the Issuer granting indulgence or extension of any kind;

(d) the voluntary or involuntary liquidation, dissolution, sale of any collateral, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of debt of, or other similar proceedings affecting, the Issuer or any of the assets of the Issuer;

12

(e) any invalidity of, or defect or deficiency in, the Capital Securities;

(f) any failure or omission to receive any regulatory approval or consent required in connection with the Common Securities or Capital Securities, including the failure to receive any approval of the Board of Governors of the Federal Reserve System required in connection with the Capital Securities;

(g) the settlement or compromise of any obligation guaranteed hereby or hereby incurred; or

(h) any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor, it being the intent of this Section 5.3 that the obligations of the Guarantor hereunder shall be absolute and unconditional under any and all circumstances.

There shall be no obligation of the Holders to give notice to, or obtain consent of, the Guarantor with respect to the happening of any of the foregoing.

SECTION 5.4 Rights of Holders.

(a) The Holders of a Majority in liquidation amount of the Capital Securities have the right to direct the time, method and place of conducting of any proceeding for any remedy available to the Capital Securities Guarantee Trustee in respect of this Capital Securities Guarantee or exercising any trust or power conferred upon the Capital Securities Guarantee Trustee under this Capital Securities Guarantee.

(b) If the Capital Securities Guarantee Trustee fails to enforce such Capital Securities Guarantee, any Holder of Capital Securities may institute a legal proceeding directly against the Guarantor to enforce the Capital Securities Guarantee Trustee's rights under this Capital Securities Guarantee, without first instituting a legal proceeding against the Issuer, the Capital Securities Guarantee Trustee or any other person or entity. The Guarantor waives any right or remedy to require that any action be brought first against the Issuer or any other person or entity before proceeding directly against the Guarantor.

SECTION 5.5 Guarantee of Payment.

This Capital Securities Guarantee creates a guarantee of payment and not of collection.

SECTION 5.6 Subrogation.

The Guarantor shall be subrogated to all (if any) rights of the Holders of Capital Securities against the Issuer in respect of any amounts paid to such Holders by the Guarantor under this Capital Securities Guarantee; provided, however, that the Guarantor shall not (except to the extent required by mandatory provisions of law) be entitled to enforce or exercise any right that it may acquire by way of subrogation or any indemnity, reimbursement or other agreement, in all cases as a result of payment under this Capital Securities Guarantee, if, at the time of any such payment, any amounts are due and unpaid under this Capital Securities Guarantee. If any

13

amount shall be paid to the Guarantor in violation of the preceding sentence, the Guarantor agrees to hold such amount in trust for the Holders and to pay over such amount to the Holders.

SECTION 5.7 Independent Obligations.

The Guarantor acknowledges that its obligations hereunder are independent of the obligations of the Issuer with respect to the Capital Securities, and that the Guarantor shall be liable as principal and as debtor hereunder to make Guarantee Payments pursuant to the terms of this Capital Securities Guarantee notwithstanding the occurrence of any event referred to in subsections (a) through (h), inclusive, of Section 5.3 hereof.

ARTICLE 6
LIMITATION OF TRANSACTIONS; SUBORDINATION

SECTION 6.1 Limitation of Transactions.

So long as any Capital Securities remain outstanding, if there shall have occurred and be continuing an Event of Default under this Capital Securities Guarantee, an Event of Default or a Nonpayment under the Declaration or during an Extended Interest Payment Period (as defined in the Indenture), then (a) the Guarantor shall not declare or pay any dividend on, make any distributions with respect to, or redeem, purchase, acquire or make a liquidation payment with respect to, any of its capital stock (other than (i) purchases or acquisitions of shares of its common stock in connection with the satisfaction by the Guarantor of its obligations under any employee benefit plans, (ii) as a result of a reclassification of the Guarantor's capital stock or the exchange or conversion of one class or series of the Guarantor's capital stock for another class or series of the Guarantor's capital stock, or (iii) the purchase of fractional interests in shares of the Guarantor's capital stock pursuant to an acquisition or the conversion or exchange provisions of such capital stock of the Guarantor or the security being converted or exchanged) or make any guarantee payments with respect to the foregoing or (b) the Guarantor shall not make any payment of interest, principal or premium, if any, on or repay, repurchase or redeem any debt securities (including guarantees) issued by the Guarantor which rank pari passu with or junior to the Notes.

SECTION 6.2 Ranking.

This Capital Securities Guarantee will constitute an unsecured obligation of the Guarantor and will rank (i) subordinate and junior in right of payment to all other liabilities, including contingent liabilities, of the Guarantor, (ii) pari passu with the most senior preferred or preference stock now or hereafter issued by the Guarantor and with any guarantee now or hereafter entered into by the Guarantor in respect of any preferred securities (including trust preferred securities) or preference stock of any Affiliate of the Guarantor, and (iii) senior to the Guarantor's common stock.

14

ARTICLE 7
TERMINATION

SECTION 7.1 Termination.

This Capital Securities Guarantee shall terminate upon (i) full payment of the Redemption Price of all Capital Securities, (ii) upon the distribution of the Notes to the Holders of all of the Capital Securities, or (iii) upon full payment of the amounts payable in accordance with the Declaration upon liquidation or dissolution of the Issuer. Notwithstanding the foregoing, this Capital Securities Guarantee will continue to be effective or will be reinstated, as the case may be, if at any time any Holder of Capital Securities must restore payment of any sums paid under the Capital Securities or under this Capital Securities Guarantee.

ARTICLE 8
INDEMNIFICATION

SECTION 8.1 Exculpation.

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

(b) An Indemnified Person shall be fully protected in relying in good faith upon the records of the Guarantor and upon such information, opinions, reports or statements presented to the Guarantor by any Person as to matters the

Indemnified Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Guarantor, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits, losses, or any other facts pertinent to the existence and amount of assets from which Distributions to Holders of Capital Securities might properly be paid.

SECTION 8.2 Indemnification.

The Guarantor agrees to indemnify each Indemnified Person for, and to hold each Indemnified Person harmless against, any and all loss, liability, damage, claim or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses (including reasonable legal fees and expenses) of defending itself against, or investigating, any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. The obligation to indemnify as set forth in this Section 8.2 shall survive the termination of this Capital Securities Guarantee.

15

ARTICLE 9
MISCELLANEOUS

SECTION 9.1 Successors and Assigns.

All guarantees and agreements contained in this Capital Securities Guarantee shall bind the successors, assigns, receivers, trustees and representatives of the Guarantor and shall inure to the benefit of the Holders of the Capital Securities then outstanding.

SECTION 9.2 Amendments.

Except with respect to any changes that do not adversely affect the rights of Holders (in which case no consent of Holders will be required), this Capital Securities Guarantee may only be amended with the prior approval of the Holders of at least a Majority in liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) of all the outstanding Capital Securities. The provisions of Section 12.2 of the Declaration with respect to meetings of Holders of the Securities apply to the giving of such approval.

SECTION 9.3 Notices.

All notices provided for in this Capital Securities Guarantee shall be in writing, duly signed by the party giving such notice, and shall be delivered, telecopied or mailed by first class mail, as follows:

(a) If given to the Capital Securities Guarantee Trustee, at the Capital Securities Guarantee Trustee's mailing address set forth below (or such other address as the Capital Securities Guarantee Trustee may give notice of to the Holders of the Capital Securities):

The Bank of New York
101 Barclay Street, 21 West
New York, New York 10286
Attention: Corporate Trust Trustee Administration
Telecopy: (212)815-5915

(b) If given to the Guarantor, at the Guarantor's mailing address set forth below (or such other address as the Guarantor may give notice of to the Holders of the Capital Securities):

Bank of America Corporation
Bank of America Corporate Center
100 North Tryon Street
NC1-007-23-01
Charlotte, North Carolina 28255
Attention: Corporate Treasury
Telecopy: (704) 386-0270

16

(c) If given to any Holder of Capital Securities, at the address set forth on the books and records of the Issuer.

All such notices shall be deemed to have been given when received

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

SECTION 9.4 Benefit.

This Capital Securities Guarantee is solely for the benefit of the Holders of the Capital Securities and, subject to Section 3.1(a), is not separately transferable from the Capital Securities.

SECTION 9.5 Governing Law.

THIS CAPITAL SECURITIES GUARANTEE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THEREOF.

17

THIS CAPITAL SECURITIES GUARANTEE is executed as of the day and year first above written.

BANK OF AMERICA CORPORATION, as Guarantor

By: _____
Name: Karen A. Gosnell
Title: Senior Vice President

THE BANK OF NEW YORK, as Capital Securities
Guarantee Trustee

By: _____
Name:
Title:

18

CONSENT OF INDEPENDENT ACCOUNTANTS

We hereby consent to the incorporation by reference in this Registration Statement on Form S-3 of our report dated January 12, 2001 relating to the financial statements, which appears in Bank of America Corporation's Annual Report on Form 10-K for the year ended December 31, 2000. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ PricewaterhouseCoopers LLP
PricewaterhouseCoopers LLP
Charlotte, North Carolina
November 15, 2001