As filed with the Securities and Exchange Commission on February 16, 2007

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 8-K

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

Date of Report (Date of earliest event reported):
February 8, 2007

BANK OF AMERICA CORPORATION

(Exact name of registrant as specified in its charter)

Delaware	**1-6523**	**56-0906609**
(State of Incorporation)	**(Commission File Number)**	**(IRS Employer Identification No.)**

100 North Tryon Street
Charlotte, North Carolina 28255
(Address of principal executive offices)

(800) 299-2265
(Registrant's telephone number, including area code)

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

ITEM 3.03. MATERIAL MODIFICATION TO RIGHTS OF SECURITYHOLDERS.

Upon issuance of each of the Series F Preferred Stock and Series G Preferred Stock (each as defined in Item 5.03 below), the ability of the Registrant to declare or pay dividends or distributions on, or repurchase, redeem or otherwise acquire for consideration, shares of its Junior Stock (as defined below) will be subject to certain restrictions in the event that the Registrant fails to declare and pay full dividends (or declare and set aside a sum sufficient for payment thereof) on its Series F Preferred Stock or Series G Preferred Stock, as applicable. "Junior Stock" means the Registrant's common stock and any other class or series of stock of the Registrant now existing or hereafter authorized over which the Series F Preferred Stock or Series G Preferred Stock, as applicable, has preference or priority in the payment of dividends or distributions. The restrictions are set forth in the respective Certificates of Designations described in Item 5.03 below.

ITEM 5.03. AMENDMENTS TO ARTICLES OF INCORPORATION OR BYLAWS; CHANGES IN FISCAL YEAR.

On February 15, 2007, the Registrant filed separate Certificates of Designations (the "Certificates of Designations") with the Delaware Secretary of State for the purpose of amending its Certificate of Incorporation to fix the designations, preferences, limitations and relative rights of each of its Floating Rate Non-Cumulative Preferred Stock, Series F, $0.01 par value per share (the "Series F Preferred Stock") and its Adjustable Rate Non-Cumulative Preferred Stock, Series G, $0.01 par value per share (the "Series G Preferred Stock"). Each of the Series F Preferred Stock and the Series G Preferred Stock has a liquidation preference of $100,000 per share. Copies of the Certificates of Designations are attached hereto as Exhibits 4.1 and 4.2, respectively, and are incorporated herein by reference.

ITEM 8.01. OTHER ITEMS.

(a) By action dated February 8, 2007, a Committee previously appointed by the Board of Directors of the Registrant approved the public offering of $2,000,000,000 in aggregate principal amount of the Registrant's Floating Rate Callable Senior Notes, due February 2010 (the "Notes") to Banc of America Securities LLC, CastleOak Securities, L.P. and Samuel A. Ramirez & Company, Inc. (the "Underwriters") and otherwise established the terms and conditions of the Notes and the sale thereof.

On February 8, 2007, the Registrant entered into an underwriting agreement with the Underwriters (the "Underwriting Agreement") for the Notes. The terms of the offering of the Notes are described in the Registrant's Prospectus dated May 5, 2006 constituting a part of the Registration Statement (hereinafter described), as supplemented by a Global Prospectus Supplement dated February 8, 2007. The Underwriting Agreement is attached hereto as Exhibit 1.1 and is incorporated herein by reference.

(b) On February 16, 2007, the Registrant and BAC Capital Trust XIII, a statutory trust created under the laws of the State of Delaware ("Trust XIII"), closed the sale of $700,000,000 of Trust XIII's Floating Rate Preferred Hybrid Income Term Securities, liquidation amount $1,000 per security (the "Floating Rate HITS"). The terms of the offering of the Floating Rate HITS are described in the Registrant's Prospectus dated May 5, 2006 constituting a part of the Registration Statement, as supplemented by a Prospectus Supplement dated February 12, 2007. The following documents are being filed with this report on Form 8-K and shall be incorporated herein by reference: (i) Underwriting Agreement, dated February 12, 2007, with respect to the sale of the Floating Rate HITS; (ii) Amended and Restated Declaration of Trust of Trust XIII; (iii) Thirteenth Supplemental Indenture with respect to the Registrant's Remarketable Floating Rate Junior Subordinated Notes due 2043 ("Floating Rate Notes") issued in connection with the Floating Rate HITS; (iv) Stock Purchase Contract Agreement with respect to the Stock Purchase Contracts ("Trust XIII Stock Purchase Contracts") for the purchase of the Series F Preferred Stock, issued in connection with the Floating Rate HITS; (vi) Form of Remarketable Floating Rate Junior Subordinated Note due 2043 of the Registrant issued in connection with the Floating Rate HITS; (vii) Collateral Agreement, dated as of February 16, 2007, with respect to Trust XIII; and (viii) HITS Guarantee Agreement, dated as of February 16, 2007 ("Trust XIII Guarantee"),with respect to Trust XIII.

Also on February 16, 2007, the Registrant and BAC Capital Trust XIV, a statutory trust created under the laws of the State of Delaware ("Trust XIV"), closed the sale of $850,000,000 of Trust XIV's 5.63% Fixed to Floating Rate Preferred Hybrid Income Term Securities, liquidation amount $1,000 per security (the "Fixed to Floating Rate HITS"). The terms of the offering of the Fixed to Floating Rate HITS are described in the Registrant's Prospectus dated May 5, 2006 constituting a part of the Registration Statement, as supplemented by a Prospectus Supplement dated February 12, 2007. The following documents are being filed with this report on Form 8-K and shall be incorporated herein by reference: (i) Underwriting Agreement, dated February 12, 2007, related to the sale of the Fixed to Floating Rate HITS; (ii) Amended and Restated Declaration of Trust of Trust XIV; (iii) Fourteenth Supplemental Indenture with respect to the Registrant's Remarketable Fixed Rate Junior Subordinated Notes due 2043 ("Fixed Rate Notes") issued in connection with the Fixed to Floating Rate HITS; (iv) Stock Purchase Contract Agreement with respect to the Stock Purchase Contracts ("Trust XIV Stock Purchase Contracts") for the purchase of the Series G Preferred Stock, issued in connection with the Fixed to Floating Rate HITS; (vi) Form of Remarketable Fixed Rate Junior Subordinated Note due 2043 of the Registrant issued in connection with the Fixed to Floating Rate HITS; (vii) Collateral Agreement, dated as of February 16, 2007, with respect to Trust XIV; and (viii) HITS Guarantee Agreement, dated as of February 16, 2007 ("Trust XIV Guarantee"), with respect to Trust XIV.

Also on February 16, 2007, in connection with the closing of each of the offerings of the Floating Rate HITS and the Fixed to Floating Rate HITS, the Registrant entered into separate Replacement Capital Covenants (collectively, the "RCCs"), whereby the Registrant agreed for the benefit of holders of certain of its outstanding debt named in each such document (the "Covered Debt") that it would not redeem or repurchase the respective Floating Rate HITS or Fixed to Floating Rate HITS or shares of the relevant preferred stock to be issued on the applicable stock purchase date in satisfaction of the respective Stock Purchase Contracts held by each of Trust XIII and Trust XIV, unless such repurchases or redemptions are made from the proceeds of the issuance of certain qualified securities and pursuant to the other terms and conditions set forth in the RCCs. The initial Covered Debt for the RCC relating to Trust XIII is the Registrant's 6 5/8% Junior Subordinated Notes due 2036 (Cusip No. 060505CG7) and the

initial Covered Debt for the RCC relating to Trust XIV is the Registrant's 5 5/8% Junior Subordinated Notes due 2035 (Cusip No. 060505AZ7). Copies of the RCCs are attached hereto as Exhibits 99.1 and 99.2, respectively, and are incorporated herein by reference.

Each of the Notes, the Floating Rate Notes, the Fixed Rate Notes, the Trust XIII Stock Purchase Contracts, the Trust XIV Stock Purchase Contracts, the Floating Rate HITS, the Fixed to Floating Rate HITS, the Trust XIII Guarantee and the Trust XIV Guarantee were issued pursuant to the Registrant's Registration Statement on Form S-3, Registration No. 333-133852 with respect to the Registrant, Registration No. 333-133852-08 with respect to BAC Capital Trust XIII and Registration No. 333-133852-07 with respect to BAC Capital Trust XIV (collectively, the "Registration Statement"), on a delayed basis pursuant to Rule 415 under the Securities Act of 1933, as amended.

ITEM 9.01. FINANCIAL STATEMENTS AND EXHIBITS.

(d) Exhibits.

The following exhibits are filed herewith:

EXHIBIT NO.	DESCRIPTION OF EXHIBIT
1.1	Underwriting Agreement, dated February 8, 2007, with respect to the offering of the Floating Rate Callable Senior Notes, due February 2010
1.2	Underwriting Agreement, dated February 12, 2007, with respect to the Floating Rate HITS
1.3	Underwriting Agreement, dated February 12, 2007, with respect to the Fixed to Floating Rate HITS
4.1	Certificate of Designations of the Registrant with respect to Floating Rate Non-Cumulative Preferred Stock, Series F, dated February 15, 2007
4.2	Certificate of Designations of the Registrant with respect to Adjustable Rate Non-Cumulative Preferred Stock, Series G, dated February 15, 2007
4.3	Form of the Floating Rate Callable Senior Notes, due February 2010
4.4	Amended and Restated Declaration of Trust of Trust XIII, dated February 16, 2007
4.5	Amended and Restated Declaration of Trust of Trust XIV, dated February 16, 2007
4.6	Thirteenth Supplemental Indenture, dated February 16, 2007, with respect to the Floating Rate Notes

4.7	Fourteenth Supplemental Indenture, dated February 16, 2007, with respect to the Fixed Rate Notes
4.8	Stock Purchase Contract Agreement, dated February 16, 2007, with respect to the Floating Rate HITS
4.9	Stock Purchase Contract Agreement, dated February 16, 2007, with respect to the Fixed to Floating Rate HITS
4.10	Form of Remarketable Floating Rate Junior Subordinated Note due 2043 of the Registrant (included in Exhibit 4.6)
4.11	Form of Remarketable Fixed Rate Junior Subordinated Note due 2043 of the Registrant (included in Exhibit 4.7)
4.12	HITS Guarantee Agreement, dated February 16, 2007, with respect to Trust XIII
4.13	HITS Guarantee Agreement, dated February 16, 2007, with respect to Trust XIV
5.1	Opinion of Helms Mulliss & Wicker, PLLC, regarding the legality of the Floating Rate Callable Senior Notes, due February 2010
5.2	Opinion of Helms Mulliss & Wicker, PLLC, regarding the legality of the Floating Rate Notes, Trust XIII Guarantee and Series F Preferred Stock
5.3	Opinion of Helms Mulliss & Wicker, PLLC, regarding the legality of the Fixed Rate Notes, Trust XIV Guarantee and Series G Preferred Stock
8.1	Tax Opinion of Morrison & Foerster LLP regarding the Floating Rate HITS
8.2	Tax Opinion of Morrison & Foerster LLP regarding the Fixed to Floating Rate HITS
10.1	Collateral Agreement, dated as of February 16, 2007, with respect to Trust XIII
10.2	Collateral Agreement, dated as of February 16, 2007, with respect to Trust XIV
99.1	Replacement Capital Covenant, dated as of February 16, 2007, with respect to the Floating Rate HITS
99.2	Replacement Capital Covenant, dated as of February 16, 2007, with respect to the Fixed to Floating Rate HITS

SIGNATURES

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

BANK OF AMERICA CORPORATION

By: /s/ TERESA M. BRENNER
TERESA M. BRENNER
Associate General Counsel

Dated: February 16, 2007

INDEX TO EXHIBITS

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Exhibit 1.1

BANK OF AMERICA CORPORATION

UNDERWRITING AGREEMENT
$2,000,000,000 FLOATING RATE CALLABLE SENIOR NOTES,
DUE FEBRUARY 2010

New York, New York
February 8, 2007

To the Representatives
named in Schedule I
hereto of the Underwriters
named in Schedule II hereto

Dear Ladies and Gentlemen:

Bank of America Corporation, a Delaware corporation (the "Company"), proposes to sell to the underwriters named in Schedule II hereto (the "Underwriters"), for whom you are acting as Representatives (the "Representatives"), the principal amount of one or more series of its securities identified in Schedule I hereto (the "Securities"). The Securities will be issued under an indenture dated as of January 1, 1995 between the Company and The Bank of New York Trust Company, N.A., as successor trustee to The Bank of New York (the "Trustee"), as supplemented by the First Supplemental Indenture dated as of September 18, 1998, the Second Supplemental Indenture dated as of May 7, 2001, the Third Supplemental Indenture dated as of July 28, 2004 and the Fourth Supplemental Indenture dated April 28, 2006 (as so supplemented, the "Indenture"). The Securities are described more fully in the Prospectus referred to below. If the firm or firms listed in Schedule II hereto include only the firm or firms listed in Schedule I hereto, then the terms "Underwriters" and "Representatives", as used herein, each shall be deemed to refer to such firm or firms.

1. Representations and Warranties.

(a) The Company represents and warrants to, and agrees with, each Underwriter that:

(i) The Company has prepared and filed with the Securities and Exchange Commission (the "Commission") a registration statement on Form S-3 (File No. 333-133852), which contains a base prospectus (the "Base Prospectus"), to be used in connection with the public offering and sale of the Securities. Such registration statement, as amended, including the financial statements, exhibits and schedules thereto, at each time of effectiveness under the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (collectively, the "Securities Act"), including any required information deemed to be a part thereof at the time of effectiveness pursuant to Rule 430B under the Securities Act or the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated

thereunder (collectively, the "Exchange Act"), is called the "Registration Statement." The term "Prospectus" shall mean the final prospectus supplement relating to the Securities, together with the Base Prospectus, that is first filed pursuant to Rule 424(b) after the date and time that this Agreement is executed and delivered by the parties hereto (the "Execution Time"). Any reference herein to the Registration Statement or the Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the Securities Act; any reference to any amendment or supplement to the Prospectus shall be deemed to refer to and include any documents filed after the date of such Prospectus under the Exchange Act, and incorporated by reference in such Prospectus; and any reference to any amendment to the Registration Statement shall be deemed to refer to and include any annual report of the Company filed pursuant to Section 13(a) or 15(d) of the Exchange Act after the effective date of the Registration Statement that is incorporated by reference in the Registration Statement. All references in this Agreement to the Registration Statement, the Prospectus, or any amendments or supplements to either of the foregoing, shall include any copy thereof filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval System ("EDGAR").

(ii) The term "Disclosure Package," as to each series of Securities, shall mean (A) the Base Prospectus; (B) the applicable issuer free writing prospectuses as defined in Rule 433 of the Securities Act (each, an "Issuer Free Writing Prospectus"), if any, identified in Schedule III hereto; (C) any other free writing prospectus that the parties hereto shall hereafter expressly agree in writing to treat as part of each Disclosure Package, and (D) the applicable Final Term Sheet (as defined herein), which also shall be identified in Schedule III hereto. As of 4:20 p.m. (Eastern time) on the date of this Agreement (the "Applicable Time"), each Disclosure Package did not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from a Disclosure Package based upon and in conformity with written information furnished to the Company by any Underwriter specifically for use therein, it being understood and agreed that such information furnished by or on behalf of any Underwriter consists only of the information described as such in Section 7(b) hereof (the "Underwriter Information").

(iii) As of the date hereof, when the Prospectus is first filed with the Commission pursuant to Rule 424(b) under the Securities Act, when any supplement or amendment to the Prospectus is filed with the Commission, at the Closing Date (as hereinafter defined) and, with respect to the Registration Statement in (A) and (B) below, as of the Applicable Time, (A) the Registration Statement is effective, the Registration Statement, as amended as of any such time, and the Prospectus, as amended or supplemented as of any such time, and the Indenture complied, complies or will comply in all material respects with the applicable provisions of the Securities Act, the Trust Indenture Act of 1939, as amended, and the rules and regulations of the Commission thereunder (the "Trust Indenture Act"), and the Exchange Act, (B) the Registration Statement, as amended as of any such time, did not, does not and will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading, and (C) the Prospectus, as amended or supplemented as of any such time, did not, does not and

will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading; provided, however, that the Company makes no representations or warranties as to (I) 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 the Trustee or (II) the Underwriter Information. The documents which are incorporated by reference in the Registration Statement, each Disclosure Package or the Prospectus or from which information is so incorporated by reference, when they were filed with the Commission, complied in all material respects with the requirements of the Securities Act, the Exchange Act, as applicable, and did not, when such documents were so filed, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The Commission has not issued any stop order suspending the effectiveness of the Registration Statement or any order preventing or suspending the use of the Prospectus, and the Company is without knowledge that any proceedings have been instituted for either purpose.

(iv)(A) At the earliest time after the Company or another offering participant made a *bona fide* offer (within the meaning of Rule 164(h)(2) of the Securities Act) and (B) as of the date of the execution and delivery of this Agreement (with such date being used as a determination date for purposes of this clause (B)), the Company neither was nor is an Ineligible Issuer (as defined in Rule 405 of the Securities Act).

(v) Neither any Issuer Free Writing Prospectus nor any Final Term Sheet, as of its issue date and at all subsequent times through the completion of the offering contemplated hereby or until any earlier date that the Company notified or notifies the Representatives as described in the next sentence, did not, does not, and will not include any information that conflicted, conflicts, or will conflict with the information contained in the Registration Statement, including any document incorporated by reference therein or the Prospectus, that has not been superseded or modified. If at any time following issuance of the Issuer Free Writing Prospectus and prior to the end of the Prospectus Delivery Period (as defined below), there occurred or occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted or would conflict with the information contained in the Registration Statement or the Prospectus, the Company has promptly notified or will promptly notify the Representatives and has promptly amended or supplemented or will promptly amend or supplement, at its own expense, such Issuer Free Writing Prospectus to eliminate or correct such conflict. The foregoing two sentences do not apply to statements in or omissions from an Issuer Free Writing Prospectus based upon and in conformity with Underwriter Information.

(vi) The Company has not distributed and will not distribute, prior to the later of the Closing Date and the completion of the Underwriters' distribution of the Securities, any offering material in connection with the offering and sale of the Securities other than the Registration Statement, the Prospectus and any Issuer Free Writing Prospectus reviewed and consented to by the Underwriters and included in Schedule III hereto.

(vii)(A) At the time of filing the Registration Statement, (B) at the time of the most recent amendment thereto for the purposes of complying with Section 10(a)(3) of the Securities Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Section 13 or 15(d) of the Exchange Act or form of prospectus), (C) at the time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c) of the Securities Act) made any offer relating to the Securities in reliance on the exemption of Rule 163 of the Securities Act, and (D) at the Execution Time (with such date being used as the determination date for purposes of this clause (D)), the Company was and is a "well-known seasoned issuer" as defined in Rule 405 of the Securities Act. The Registration Statement is an "automatic shelf registration statement," as defined in Rule 405 of the Securities Act, the Company has not received from the Commission any notice pursuant to Rule 401(g)(2) of the Securities Act objecting to use of the automatic shelf registration statement form and the Company has not otherwise ceased to be eligible to use the automatic shelf registration statement form.

(b) Each Underwriter, severally and not jointly, represents and agrees that:

(i) it has not and will not, directly or indirectly, offer, sell or deliver any of the Securities or distribute the Prospectus or any other offering materials relating to the Securities in or from any jurisdiction except under circumstances that will, to the best of its knowledge and belief, result in compliance with any applicable laws and regulations thereof and that, to the best of its knowledge and belief, will not impose any obligations on the Company except as set forth herein; and

(ii) it will comply in all material respects with the selling restrictions set forth in the Prospectus under the caption "Underwriting—Selling Restrictions."

2. Purchase and Sale. Subject to the terms and conditions and in reliance upon the representations and warranties herein set forth, the Company agrees to sell to each Underwriter, and each Underwriter agrees, severally and not jointly, to purchase from the Company, at the purchase price set forth in Schedule I hereto, the principal amount of the Securities set forth opposite such Underwriter's name in Schedule II hereto.

3. Delivery and Payment. Delivery of and payment for the Securities shall be made on the date and at the time specified in Schedule I hereto, which date and time may be postponed by agreement between the Representatives and the Company or as provided in Section 8 hereto (such date and time of delivery and payment for the Securities being herein called the "Closing Date"). Delivery of the Securities shall be made to the Representatives for the respective accounts of the several Underwriters against payment by the several Underwriters through the Representatives of the purchase price thereof in the manner set forth in Schedule I hereto. Unless otherwise agreed, certificates for the Securities shall be in book-entry form, and such certificates may be deposited with The Depository Trust Company ("DTC") or a custodian for DTC and registered in the name of Cede & Co., as nominee for DTC.

4. Agreements. The Company agrees with the several Underwriters that:

(a) During the period beginning on the Applicable Time and ending on the later of the Closing Date or such date, as in the opinion of counsel for the Underwriters, the Prospectus is no longer required by law to be delivered in connection with sales by an Underwriter or dealer (except for delivery requirements imposed because such Underwriter or dealer is an affiliate of the Company), including in circumstances where such requirement may be satisfied pursuant to Rule 172 (the "Prospectus Delivery Period"), the Company will not file any amendment to the Registration Statement or supplement to the Base Prospectus or a Disclosure Package (including the Prospectus) unless the Company has furnished you a copy for your review prior to filing and will not file any such proposed amendment or supplement to which you reasonably object. Subject to the foregoing sentence, the Company will cause the Prospectus to be filed with the Commission pursuant to Rule 424 via EDGAR. The Company will advise the Representatives promptly (i) when the Prospectus shall have been filed with the Commission pursuant to Rule 424, (ii) when any amendment to the Registration Statement or each Disclosure Package relating to a series of Securities shall have become effective, (iii) of any request by the Commission for any amendment of the Registration Statement or amendment of or supplement to the Prospectus or a Disclosure Package or for any additional information, (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or the institution or threatening of any proceeding for that purpose, and (v) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose. The Company will use its best efforts to prevent the issuance of any such stop order and, if issued, to obtain as soon as possible the withdrawal thereof.

(b) If, at any time during the Prospectus Delivery Period, except with respect to any such delivery requirement imposed upon an affiliate of the Company in connection with any secondary market sales, any event occurs as a result of which each Disclosure Package or the Prospectus as then amended or supplemented would 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 or then prevailing, as the case may be, not misleading, or if it shall be necessary to amend or supplement each Disclosure Package or the Prospectus to comply with the Securities Act or the Exchange Act, the Company promptly will prepare and file with the Commission, subject to the first sentence of paragraph (a) of this Section 4, an amendment or supplement which will correct such statement or omission or an amendment or supplement which will effect such compliance (including, if consented to by the Underwriters, by means of an Issuer Free Writing Prospectus), and will give immediate notice, and confirm in writing, to the Underwriters to cease the solicitation of offers to purchase the Securities, and furnish to the Underwriters a reasonable number of copies of such amendment or supplement.

(c) The Company will make generally available to its security holders and to the Representatives as soon as practicable, but not later than 60 days after the close of the period covered thereby, an earnings statement (in form complying with the provisions of Rule 158 under the Securities Act) covering a twelve-month period beginning not later than the first day of the Company's fiscal quarter next following the "effective date" (as defined in said Rule 158) of the Registration Statement.

(d) The Company will furnish to the Representatives and counsel for the Underwriters, without charge, copies of the Registration Statement (including exhibits thereto) and each amendment thereto which shall become effective on or prior to the Closing Date and, so long as delivery of a prospectus by an Underwriter or dealer may be required by the Securities Act, as many copies of the Prospectus and any amendments thereof and supplements thereto as the Representatives may reasonably request. The Company will pay the expenses of printing all documents relating to the offering.

(e) The Company will arrange for the qualification of the Securities for sale under the laws of such jurisdictions as the Representatives may reasonably designate, will maintain such qualifications in effect so long as required for the distribution of the Securities and will arrange for the determination of the legality of the Securities for purchase by investors; provided, however, that the Company shall not be required to qualify to do business in any jurisdiction where it is not now so qualified or to take any action which would subject it to general or unlimited service of process in any jurisdiction where it is not now so subject.

(f) Until the business day following the Closing Date, the Company will not, without the consent of the Representatives, offer or sell, or announce the offering of, any securities covered by the Registration Statement or by any other registration statement filed under the Securities Act; provided, however, the Company may, at any time, offer or sell or announce the offering of securities (i) covered by a registration statement on Form S-8 or (ii) covered by a registration statement on Form S-3 and (A) pursuant to which the Company issues securities under one of the Company's medium-term note programs (including, without limitation, the Company's Series K Medium-Term Note Program and the Company's InterNotes Program), (B) pursuant to which the Company issues securities for its dividend reinvestment plan, or (C) trust preferred securities to be issued in underwritten offerings (under Registration Statement No. 333-133852), or (iii) pursuant to which affiliates of the Company offer securities of the Company in secondary market transactions.

(g) As to each series of the Securities, the Company will prepare a final term sheet containing only a description of such series, in a form approved by the Representatives and contained in Schedule IV of this Agreement, and will file each such term sheet pursuant to Rule 433(d) under the Securities Act as promptly as possible, but in any case not later than the time required by such rule (each such term sheet, a "Final Term Sheet").

(h) The Company represents that it has not made and agrees that, unless it obtains the prior written consent of the Representatives, it will not make, any offer relating to the Securities that would constitute an Issuer Free Writing Prospectus or that would otherwise constitute a "free writing prospectus" (as defined in Rule 405 of the Securities Act) required to be filed by the Company with the Commission or retained by the Company under Rule 433 of the Securities Act; provided that the prior written consent of the Representatives shall be deemed to have been given in respect of the Issuer Free Writing Prospectuses included in Schedule III hereto. Any such free writing prospectus consented to by the Representatives is hereinafter referred to as a "Permitted Free Writing Prospectus." The Company agrees that (i) it has treated and will treat as the case may be, each Permitted Free Writing Prospectus as an Issuer Free Writing Prospectus, and (ii) it has complied and will comply, as the case may be, with the

requirements of Rules 164 and 433 of the Securities Act applicable to any Permitted Free Writing Prospectus, including in respect of timely filing with the Commission, legending and record keeping. The Company consents to the use by any Underwriter of a free writing prospectus that (a) is not an "issuer free writing prospectus" as defined in Rule 433, and (b) contains only (i) information describing the preliminary terms of the Securities or their offering, (ii) information permitted by Rule 134 under the Securities Act or (iii) information that describes the final terms of the Securities or their offering and that is included in a Final Term Sheet of the Company contemplated in paragraph (g) above.

(i) If immediately prior to the third anniversary (the "Renewal Deadline") of the initial effective date of the Registration Statement, any of the Securities remain unsold by the Underwriters, the Company will file prior to the Renewal Deadline, if it has not already done so and is eligible to do so, a new automatic shelf registration statement relating to such Securities, in a form satisfactory to the Representatives. If the Company is no longer eligible to file an automatic shelf registration statement, the Company will prior to the Renewal Deadline, if it has not already done so, file a new shelf registration statement relating to such Securities, in a form satisfactory to the Representatives, and will use its best efforts to cause such registration statement to be declared effective within 60 days after the Renewal Deadline. The Company will take all other action necessary or appropriate to permit the public offering and sale of the Securities to continue as contemplated in the expired registration statement relating to the Securities. References herein to the Registration Statement shall include such new automatic shelf registration statement or such new shelf registration statement, as the case may be.

(j) If at any time when any of the Securities remain unsold by the Underwriters the Company receives from the Commission a notice pursuant to Rule 401(g)(2) or otherwise ceases to be eligible to use the automatic shelf registration statement form, the Company will (i) promptly notify the Representatives, (ii) promptly file a new registration statement or post-effective amendment on the proper form relating to such Securities, in a form satisfactory to the Representatives, (iii) use its best efforts to cause such registration statement of post-effective amendment to be declared effective and (iv) promptly notify the Representatives of such effectiveness. The Company will take all other action necessary or appropriate to permit the public offering and sale of the Securities to continue as contemplated in the registration statement that was the subject of the Rule 401(g)(2) notice or for which the Company has otherwise become ineligible. References herein to the Registration Statement shall include such new registration statement or post-effective amendment, as the case may be.

(k) The Company agrees to pay the required Commission filing fees relating to the Securities within the time required by Rule 456(b)(1) of the Securities Act without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r) of the Securities Act.

5. Conditions to the Obligations of the Underwriters. The obligations of the Underwriters to purchase the Securities shall be subject to the accuracy of the representations and warranties on the part of the Company contained herein as of the date hereof, as of the date of the effectiveness of any amendment to the Registration Statement filed prior to the Closing Date (including the filing of any document incorporated by reference therein) and as of the

Closing Date, to the accuracy of the statements of the Company made in any certificates furnished pursuant to the provisions hereof, to the performance by the Company of its obligations hereunder and to the following additional conditions:

(a) For the period from and after effectiveness of this Agreement and prior to the Closing Date:

(i) no stop order suspending the effectiveness of the Registration Statement, or any post-effective amendment to the Registration Statement, shall be in effect and no proceedings for such purpose shall have been instituted or threatened by the Commission, and the Company has not received from the Commission any notice pursuant to Rule 401(g)(2) of the Securities Act objecting to use of the automatic shelf registration statement form (unless the Securities are duly registered in the manner contemplated by Rule 401(g)(2) to the satisfaction of the Representatives prior to the Closing Date);

(ii) the Company shall have filed the Prospectus with the Commission (including the information required by Rule 430B under the Securities Act) in the manner and within the time period required by Rule 424(b) under the Securities Act; or the Company shall have filed a post-effective amendment to the Registration Statement containing the information required by such Rule 430B, and such post-effective amendment shall have become effective (if not automatically effective under the rules of the Commission);

(iii) each Final Term Sheet, and any other material required to be filed by the Company pursuant to Rule 433(d) under the Securities Act, shall have been filed with the Commission within the applicable time periods prescribed for such filings under such Rule or, to the extent applicable, under Rule 164(b); and

(iv) the NASD shall have raised no objection to the fairness and reasonableness of the underwriting terms and arrangements.

(b) The Company shall have furnished to the Representatives the opinion of Helms Mulliss & Wicker, PLLC, counsel for the Company, dated the Closing Date, to the effect of paragraphs (i) and (v) through (xi) below, and the opinion of the General Counsel of the Company (or such other attorney, reasonably acceptable to counsel to the Underwriters, who exercises general supervision or review in connection with a particular securities law matter for the Company), dated the Closing Date, to the effect of paragraphs (ii) through (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 and conduct its business as described in each Disclosure Package and the Prospectus, and is duly registered as a bank holding company under the Bank Holding Company Act of 1956, as amended; Bank of America, N.A. (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 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. § 55, as amended) nonassessable, and, except as otherwise set forth in each Disclosure Package and the Prospectus, all outstanding shares of capital 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 such counsel is without knowledge of any other security interests, claims, liens or encumbrances;

(iv) such counsel is without knowledge that (1) there is any 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, each Disclosure Package, or the Prospectus which is omitted or not adequately disclosed therein, or (2) any franchise, contract or other document of a character required to be described in the Registration Statement, a Disclosure Package, or the Prospectus, or to be filed as an exhibit to the Registration Statement, is not so described or filed as required;

(v) the Indenture and the Securities conform in all material respects to the descriptions thereof contained in each Disclosure Package and the Prospectus;

(vi) the Indenture has been duly authorized, executed and delivered by the Company, has been duly qualified under the Trust Indenture Act, and constitutes a legal, valid, and binding instrument of the Company enforceable against the Company in accordance with its terms, subject 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) and similar bank regulatory powers and to the application of principles of public policy; and the Securities have been duly authorized and, when executed and authenticated in accordance with the provisions of the Indenture and delivered to and paid for by the Underwriters pursuant to this Agreement, will constitute legal, valid and binding obligations of the Company entitled to the benefits of the Indenture and enforceable against the Company in accordance with their terms, subject 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) and similar bank regulatory powers and to the application of principles of public policy;

(vii) the Registration Statement has become effective under the Securities Act; no stop order suspending the effectiveness of the Registration Statement, or any post-effective amendment to the Registration Statement, has been issued, and such counsel is without knowledge that any proceeding for that purpose has been instituted or threatened, or that the Company has received from the Commission any notice pursuant to Rule 401(g)(2) of the

Securities Act objecting to the use of the automatic shelf registration statement form; and the Registration Statement, each Disclosure Package and 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 Securities Act, the Exchange Act and the Trust Indenture Act;

(viii) this Agreement has been duly authorized, executed and delivered by the Company and constitutes a legal, valid and binding agreement of the Company enforceable against the Company in accordance with its terms, subject 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 except insofar as the enforceability of the indemnity and contribution provisions contained in this Agreement may be limited by federal and state securities laws, and further subject to 12 U.S.C. §1818(b)(6)(D) and similar bank regulatory powers and to the application of principles of public policy;

(ix) no consent, approval, authorization or order of any court or governmental agency or body in the United States is necessary or required on behalf of the Company for the consummation of the transactions contemplated herein, except such as have been obtained under the Securities Act and such as may be required under the blue sky, state securities or insurance or similar laws of the United States in connection with the purchase and distribution of the Securities by the Underwriters and such other approvals (specified in such opinion) as have been obtained;

(x) neither the issuance and sale of any of the Securities, nor the consummation of any other of the transactions herein contemplated nor the fulfillment of the terms hereof will conflict with, result in a breach of, or constitute a default under (1) the certificate of incorporation or by-laws of the Company, each as amended to date, (2) the terms of any indenture or other material agreement or instrument known to such counsel and to which the Company or the Principal Subsidiary Bank is a party or bound, or (3) any order, law 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; and

(xi) such counsel is without knowledge of any rights to the registration of securities of the Company under the Registration Statement which have not been waived by the holders of such rights or which have not expired by reason of lapse of time following notification of the Company's intention to file the Registration Statement.

In rendering such opinion, but without opining in connection therewith, such counsel also shall state that, although it expresses no view as to portions of the Registration Statement, each Disclosure Package or the Prospectus consisting of financial statements and other financial, accounting and statistical information and 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, each Disclosure Package, or the Prospectus or any

amendment or supplement thereto (other than as stated in (v) above), it has no reason to believe that such remaining portions of the Registration Statement or any amendment thereto as of the time it became effective, as of the Applicable Time or as of the date of such opinion, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein not misleading or that, subject to the foregoing with respect to financial statements and other financial, accounting and statistical information, each Disclosure Package, as of the Applicable Time, contained an untrue statement of a material fact or omitted to state a material fact necessary to make the statement therein, in light of the circumstances under which they were made, not misleading, or that the Prospectus, as amended or supplemented, as of its date or as of the date of such opinion contained or contains any untrue statement of a material fact or omitted or omits to state 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. Such counsel also does not pass upon, and does not assume any responsibility for, ascertaining whether or when any of the information contained in each Disclosure Package was conveyed to any purchaser of the Notes

In rendering such opinion, such counsel may rely (A) as to matters involving the application of laws of any jurisdiction other than the State of North Carolina, the United States, or the General Corporation Law of the State of Delaware to the extent deemed proper and specified in such opinion, upon the opinion of counsel to the Underwriters, or 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 certificates of responsible officers of the Company and its subsidiaries and public officials.

(c) The Representatives shall have received from Morrison & Foerster LLP, counsel for the Underwriters, such opinion or opinions, dated the Closing Date, with respect to the issuance and sale of the Securities, the Indenture, the Registration Statement, each Disclosure Package, and the Prospectus and any other related matters as the Representatives may reasonably require, and the Company shall have furnished to such counsel such documents as they request for the purpose of enabling them to pass upon such matters.

(d) The Company shall have furnished to the Representatives a certificate of the Company, signed by any Senior Vice President or Treasurer or any other authorized officer of the Company, dated the Closing Date, to the effect that the signers of such certificate have carefully examined the Registration Statement, each Disclosure Package, and the Prospectus and this Agreement and they are without knowledge that:

(i) the representations and warranties of the Company in this Agreement are not true and correct with the same force and effect as though expressly made at and as of the Closing Date and the Company has not performed or complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied hereunder at or prior to the Closing Date;

(ii) any stop order suspending the effectiveness of the Registration Statement has been issued or any proceedings for that purpose have been instituted or threatened by the Commission; and

(iii) since the date of the most recent financial statements included in each Disclosure Package and the Prospectus, there has been any material adverse change or any development involving a prospective material adverse change in the condition (financial or other), earnings, business or properties of the Company and its subsidiaries, whether or not arising from transactions in the ordinary course of business, except as set forth in or contemplated in each Disclosure Package and the Prospectus.

(e) At the time this Agreement is executed, PricewaterhouseCoopers LLP shall have furnished to the Representatives a letter or letters (which may refer to letters previously delivered to one or more of the Representatives), dated as of the date of this Agreement, in form and substance satisfactory to the 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 an independent registered public accounting firm with respect to the Company within the meaning of the Securities Act and the applicable rules and regulations thereunder adopted by the Commission and the Public Company Accounting Oversight Board (United States).

(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 the Prospectus comply as to form in all material respects with the applicable accounting requirements of the Securities Act and the Exchange Act and the related rules and regulations adopted by the Commission.

(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 of the Principal Subsidiary Bank 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 Statement of Accounting Standards No. 100, 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 the 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 the 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 the Prospectus, do not comply as to form in all material respects with the applicable accounting requirements of the Exchange Act and the published rules and regulations thereunder;

(2) any material modifications should be made to the unaudited condensed consolidated interim financial statements, included or incorporated by reference in the Registration Statement and the 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 common stock and additional paid-in capital or the consolidated long-term debt (other than scheduled repayments of such debt) 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 common stock and additional paid-in capital or the consolidated long-term debt (other than scheduled repayments of such debt) of the Company and the subsidiaries on a consolidated basis, except in all instances for changes or decreases which the Registration Statement and the 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 the 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, on the Closing Date, 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 paragraph (e) and in Schedule I hereto.

(f) Subsequent to the respective dates as of which information is given in the Registration Statement, each Disclosure Package, and the Prospectus, there shall not have been (i) any change or decrease specified in the letter or letters referred to in paragraph (e) of this Section 5 or (ii) any change, or any development involving a prospective change, in or affecting the condition (financial or other), earnings, business or properties of the Company and its subsidiaries the effect of which, in any case referred to in clause (i) or (ii) above, is, in the judgment of the Representatives, so material and adverse as to make it impractical or inadvisable to proceed with the offering or the delivery of the Securities as contemplated by the Registration Statement, each Disclosure Package and the Prospectus.

(g) Prior to the Closing Date, the Company shall have furnished to the Representatives such further information, certificates and documents as the Representatives may reasonably request.

(h) On or after the date hereof and prior to the Closing Date, (i) no downgrading shall have occurred in the rating accorded the Company's debt securities by any "nationally recognized statistical rating organization," as that term is defined by the Commission for purposes of Rule 436(g)(2) under the Securities Act, and (ii) no such organization shall have publicly announced that it has under surveillance or review, with possible negative implications, its rating of any of the Company's debt securities.

(i) There shall not have come to the Representatives' attention any facts that would cause the Representatives to believe that each Disclosure Package, as of the Applicable Time, or the Prospectus, at the time it was required to be delivered to a purchaser of any of the Securities, included an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in light of the circumstances existing at the time of such delivery, not misleading.

If any of the conditions specified in this Section 5 shall not have been fulfilled in all material respects when and as provided in this Agreement, or if any of the opinions and certificates mentioned above or elsewhere in this Agreement shall not be in all material respects reasonably satisfactory in form and substance to the Representatives and their counsel, this Agreement and all obligations of the Underwriters hereunder may be canceled at, or at any time prior to, the Closing Date by the Representatives. Notice of such cancellation shall be given to the Company in writing or by telephone or telegraph confirmed in writing.

6. Payment of Expenses. The Company will pay all expenses incident to the performance of its obligations under this Agreement, including (i) the preparation, printing, delivery to the Underwriters and filing of the Registration Statement, any Issuer Free Writing Prospectus and the Prospectus as originally filed and of each amendment or supplement thereto, (ii) the copying of this Agreement, (iii) the preparation, issuance and delivery of the certificates

for the Securities to the Underwriters, including capital duties, stamp duties and transfer taxes, if any, payable upon issuance of any of the Securities, the sale of the Securities to the Underwriters and the fees and expenses of any transfer agent or trustee for the Securities, (iv) the fees and expenses of counsel to any such transfer agent or trustee, (v) the fees and disbursements of the Company's counsel and accountants, (vi) the qualification of the Securities under state securities laws in accordance with the provisions of Section 4(e), including filing fees and the reasonable fees and disbursements of counsel for the Underwriters in connection therewith and in connection with the preparation of any Blue Sky Survey, (vii) the printing and delivery to the Underwriters of copies of any Blue Sky Survey, and (viii) the fees of the National Association of Securities Dealers, Inc., (ix) the preparation, printing, reproduction and delivery to the Underwriters of copies of the Indentures and all supplements and amendments thereto, (x) any fees charged by rating agencies for the rating of the Securities, and (xi) the fees and expenses of any depository and any nominee thereof in connection with the Securities.

If the sale of any of the Securities provided for herein is not consummated because any condition to the obligations of the Underwriters set forth in Section 5 hereof is not satisfied or because of any refusal, inability or failure on the part of the Company to perform any agreement herein or comply with any provision hereof other than by reason of a default by any of the Underwriters, the Company will reimburse the Underwriters severally upon demand for all out-of-pocket expenses (including reasonable fees and disbursements of counsel) that shall have been incurred by them in connection with the proposed purchase and sale of such Securities.

7. Indemnification and Contribution.

(a) The Company agrees to indemnify and hold harmless each Underwriter, and each person, if any, who controls any Underwriter within the meaning of the Securities Act and the Exchange Act, against any loss, claim, damage, liability or expense, as incurred, to which such Underwriter or such controlling person may become subject, insofar as such loss, claim, damage, liability or expense (or actions in respect thereof as contemplated below) arises out of or is based upon (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, or any amendment thereto, including any information deemed to be a part thereof pursuant to Rule 430B under the Securities Act, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading; or (ii) any untrue statement or alleged untrue statement of a material fact contained in each Disclosure Package or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, and to reimburse each Underwriter and each such controlling person for any and all expenses (including the fees and disbursements of counsel chosen by Banc of America Securities LLC) as such expenses are reasonably incurred by such Underwriter or such controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action; provided, however, that the foregoing indemnity agreement shall not apply to any loss, claim, damage, liability or expense to the extent, but only to the extent, arising out of or based upon any untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with the Underwriter Information 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 the Trustee. The indemnity agreement set forth in this Section 7(a) shall be in addition to any liabilities that the Company may otherwise have.

(b) Each Underwriter agrees, severally and not jointly, to indemnify and hold harmless the Company, each of its directors, each of its officers who signed the Registration Statement and each person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act, against any loss, claim, damage, liability or expense, as incurred, to which the Company, or any such director, officer or controlling person may become subject, insofar as such loss, claim, damage, liability or expense (or actions in respect thereof as contemplated below) arises out of or is based upon (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, or any amendment thereto, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading; or (ii) upon any untrue statement or alleged untrue statement of a material fact contained in the Base Prospectus or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, in each case to the extent, and only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Registration Statement, the Base Prospectus or the Prospectus (or any amendment or supplement thereto), in reliance upon and in conformity with the Underwriter Information; and to reimburse the Company, or any such director, officer or controlling person for any legal and other expense reasonably incurred by the Company, or any such director, officer or controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action. The Company hereby acknowledges that the only information that the Underwriters have furnished to the Company expressly for use in the Registration Statement, each Disclosure Package or the Prospectus (or any amendment or supplement thereto) are the names of the Underwriters and the statements set forth in the eighth and tenth paragraphs under the caption “Underwriting” in the Prospectus. The indemnity agreement set forth in this Section 7(b) shall be in addition to any liabilities that each Underwriter may otherwise have.

(c) Promptly after receipt by an indemnified party under this Section 7 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party under this Section 7, notify the indemnifying party in writing of the commencement thereof; but the failure to so notify the indemnifying party (i) will not relieve it from liability under paragraph (a) or (b) above unless and to the extent it did not otherwise learn of such action and such failure results in the forfeiture by the indemnifying party of substantial rights and defenses and (ii) will not, in any event, relieve the indemnifying party from any liability other than the indemnification obligation provided in paragraph (a) or (b) above. In case any such action is brought against any indemnified party and such indemnified party seeks or intends to seek indemnity from an indemnifying party, the indemnifying party will be entitled to participate in, and, to the extent that it shall elect, jointly with all other indemnifying parties similarly notified, 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 a conflict may arise between the positions of the indemnifying party and the indemnified party in conducting the defense of any such action or that there may be legal defenses available to it and/or other indemnified parties that 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 assume 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 such indemnifying party's 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 7 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 accordance with the proviso to the preceding sentence (it being understood, however, that the indemnifying party shall not be liable for the expenses of more than one separate counsel (other than local counsel approved by the Representatives)), representing the indemnified parties who are parties to such action) or (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 action, in each of which cases the fees and expenses of counsel shall be at the expense of the indemnifying party.

(d) The indemnifying party under this Section 7 shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party against any loss, claim, damage, liability or expense by reason of such settlement or judgment. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement, compromise or consent to the entry of judgment in any pending or threatened action, suit or proceeding in respect of which any indemnified party is or could have been a party and indemnity was or could have been sought hereunder by such indemnified party, unless such settlement, compromise or consent (i) includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such action, suit or proceeding and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of any indemnified party.

(e) If the indemnification provided for in Sections 7(a) through (d) is for any reason unavailable to or otherwise insufficient to hold harmless an indemnified party in respect of any losses, claims, damages, liabilities or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount paid or payable by such indemnified party, as incurred, as a result of any losses, claims, damages, liabilities or expenses referred to therein (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, from the offering of the Securities pursuant to this Agreement or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and the Underwriters, on the other hand, in connection with the statements or omissions which resulted in such losses, claims, damages, liabilities or expenses, as well as any other relevant equitable

considerations. The relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, in connection with the offering of the Securities pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of the Securities pursuant to this Agreement (before deducting expenses) received by the Company, and the total underwriting discount received by the Underwriters, in each case as set forth on the front cover page of the Prospectus, bear to the aggregate initial public offering price of the Securities as set forth on such cover. The relative fault of the Company, on the one hand, and the Underwriters, on the other hand, shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact or any such inaccurate or alleged inaccurate representation or warranty relates to information supplied by the Company, on the one hand, or the Underwriters, on the other hand, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The amount paid or payable by a party as a result of the losses, claims, damages, liabilities and expenses referred to above shall be deemed to include, subject to the limitations set forth in Section 7(c), any legal or other fees or expenses reasonably incurred by such party in connection with investigating or defending any action or claim. The provisions set forth in Section 7(c) with respect to notice of commencement of any action shall apply if a claim for contribution is to be made under this Section 7; provided, however, that no additional notice shall be required with respect to any action for which notice has been given in accordance with Section 7(c) for purposes of indemnification. The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 7(e) were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 7(e).

Notwithstanding the provisions of this Section 7(e), no Underwriter shall be required to contribute any amount in excess of the underwriting discounts received by such Underwriter in connection with the Securities underwritten by it. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations to contribute pursuant to this Section 7(e) are several, and not joint, in proportion to their respective underwriting commitments as set forth opposite their names in Schedule II. For purposes of this Section 7(e), each person, if any, who controls an Underwriter within the meaning of the Securities Act and the Exchange Act shall have the same rights to contribution as such Underwriter, and each director of the Company, each officer of the Company who signed the Registration Statement and each person, if any, who controls the Company within the meaning of the Securities Act and the Exchange Act shall have the same rights to contribution as the Company. 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 (e), notify such party or parties from whom contribution may be sought, as contemplated by the preceding paragraph. However, 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 (e).

8. Default by an Underwriter. If any one or more Underwriters shall fail to purchase and pay for any of the Securities agreed to be purchased by such Underwriter or Underwriters hereunder and such failure to purchase shall constitute a default in the performance of its or their obligations under this Agreement, the remaining Underwriters shall be obligated severally to take up and pay for (in the respective proportions which the amount of the applicable series of Securities set forth opposite their names in Schedule II hereto bear to the aggregate amount of such Securities set forth opposite the names of all the remaining Underwriters) the Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase; provided, however, that in the event that the aggregate amount of Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase shall exceed 10% of the aggregate amount of the applicable series of Securities set forth in Schedule II hereto, the remaining Underwriters shall have the right to purchase all, but shall not be under any obligation to purchase any, of such Securities, and if such non-defaulting Underwriters do not purchase all of such Securities, this Agreement will terminate as to such series of Securities without liability to any non-defaulting Underwriter or the Company. In the event of a default by any Underwriter as set forth in this Section 8, the Closing Date shall be postponed for such period, not exceeding seven days, as the Representatives shall determine in order that the required changes in the Registration Statement, each Disclosure Package and the Prospectus or in any other documents or arrangements may be effected. Nothing contained in this Agreement shall relieve any defaulting Underwriter of its liability, if any, to the Company and any non-defaulting Underwriter for damages occasioned by its default hereunder.

9. Termination. This Agreement shall be subject to termination in the absolute discretion of the Representatives, by notice given to the Company 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, or (ii) a banking moratorium shall have been declared by Federal or New York State authorities or a material disruption in the commercial banking or securities settlement or clearance services in the United States shall have occurred, or (iii) there shall have occurred any outbreak or material escalation of hostilities or other calamity or crisis (in the United States or elsewhere) 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 Securities.

10. Representations and Indemnities to Survive. The respective agreements, representations, warranties, indemnities and other statements of the Company or its officers and of the Underwriters set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of any Underwriter or the Company or any of the officers, directors or controlling persons referred to in Section 7 hereof, and will survive delivery of and payment for the Securities. The provisions of Section 6 and 7 hereof and this Section 10 shall survive the termination or cancellation of this Agreement.

11. Notices. All communications hereunder will be in writing and effective only on receipt, and, if sent to the Representatives, will be mailed, delivered or telegraphed and confirmed to them, at the address specified in Schedule I hereto, with a copy to: Morrison & Foerster LLP, 1290 Avenue of the Americas, New York, New York 10104-0050, Attn: James R. Tanenbaum; or, if sent to the Company, will be mailed, delivered or telegraphed and confirmed

to it at Bank of America Corporation, Corporate Treasury — Securities Administration, NC1-007-07-06, 100 North Tryon Street, Charlotte, North Carolina 28255, with a copy to each of: Bank of America Corporation Legal Department, NC1-002-29-01, 101 South Tryon Street, Charlotte, North Carolina 28255, Attn: General Counsel; and Helms Mulliss & Wicker, PLLC, 201 North Tryon Street, Charlotte, North Carolina 28202, Attn: Boyd C. Campbell, Jr.

12. Successors. This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and the officers and directors and controlling persons referred to in Section 7 hereof, and no other person will have any right or obligation hereunder.

13. No Fiduciary Duties; Agreement Complete.

(a) The Company acknowledges and agrees that: (i) the purchase and sale of the Securities pursuant to this Agreement, including the determination of the public offering price of the Securities and any related discounts and commissions, is an arm's-length commercial transaction between the Company, on the one hand, and the several Underwriters, on the other hand, and the Company is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated by this Agreement; (ii) in connection with each transaction contemplated hereby and the process leading to such transaction each Underwriter is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary of the Company, or its affiliates, stockholders, creditors or employees or any other party; (iii) no Underwriter has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Company with respect to any of the transactions contemplated hereby or the process leading thereto (irrespective of whether such Underwriter has advised or is currently advising the Company on other matters) and no Underwriter has any obligation to the Company with respect to the offering contemplated hereby except the obligations expressly set forth in this Agreement; (iv) the several Underwriters and their respective affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company and that the several Underwriters have no obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Underwriters have not provided any legal, accounting, regulatory or tax advice with respect to the offering contemplated hereby and the Company has consulted its own legal, accounting, regulatory and tax advisors to the extent it deemed appropriate.

(b) This Agreement supersedes all prior agreements and understandings (whether written or oral) between the Company and the several Underwriters, or any of them, with respect to the subject matter hereof. The Company hereby waives and releases, to the fullest extent permitted by law, any claims that the Company may have against the several Underwriters with respect to any breach or alleged breach of agency or fiduciary duty.

14. Applicable Law. This Agreement will be governed by and construed in accordance with the internal laws of the State of New York, without giving effect to principles of conflict of laws.

If the foregoing is in accordance with your understanding of our agreement, please sign and return to us the enclosed duplicate hereof, whereupon this letter and your acceptance shall represent a binding agreement among the Company and the several Underwriters.

Very truly yours,

BANK OF AMERICA CORPORATION

By: /s/ Susan H. McCarver
Name: Susan H. McCarver
Title: Vice President

The foregoing Agreement is
hereby confirmed and accepted
as of the date specified in
Schedule I hereto.

By: BANC OF AMERICA SECURITIES LLC

By: /s/ Lily Chang
Name: Lily Chang
Title: Principal
For themselves and the other several Underwriters, if any, named in
Schedule II to the foregoing Agreement.

SCHEDULE I

Underwriting Agreement dated February 8, 2007

Registration Statement No. 333-133852

Representatives:	Banc of America Securities LLC
Address of Representatives:	c/o Banc of America Securities LLC 214 North Tryon Street Charlotte, North Carolina 28202 Attention: Paul Cooney

Title, Purchase Price and Description of Securities:

Title: Floating Rate Callable Senior Notes, due February 2010

Principal amount: $2,000,000,000

Interest: 3-Month LIBOR + 1 basis point for the period from, and including, February 8, 2007 to, but excluding, August 18, 2008; 3-Month LIBOR + 12 basis points for the period from, and including, August 18, 2008 to, but excluding, the maturity date or earlier redemption date, as applicable. Interest payable on February 18, May 18, August 18, and November 18 of each year, beginning May 18, 2007.

Public offering price: 100%

Purchase price (include type of funds and accrued interest or amortization, if applicable): 99.975% in federal (same day) funds or wire transfer to an account previously designated to the Representatives by the Company or, if agreed to by the Representatives and the Company, by certified or official bank check or checks.

Sinking fund provisions: None.

Redemption provisions: Redeemable at 100% of the principal amount, plus any accrued and unpaid interest, on August 18, 2008, or any subsequent interest payment date.

Other provisions: None.

Closing Date, Time and Location: February 15, 2007, 9:00 a.m. Charlotte time, Office of Helms Mulliss & Wicker, PLLC.

Listing: None.

Additional items to be covered by the letter from PricewaterhouseCoopers LLP delivered pursuant to Section 5(e) at the time this Agreement is executed: None.

SCHEDULE II

$2,000,000,000 Floating Rate Callable Senior Notes, due February 2010

Underwriters	Principal Amount of Securities to be Purchased
Banc of America Securities LLC	$ 1,980,000,000
CastleOak Securities, L.P.	$ 10,000,000
Samuel A. Ramirez & Company, Inc.	$ 10,000,000
TOTAL	$ 2,000,000,000

SCHEDULE III

Issuer Free Writing Prospectuses

The Final Term Sheet, as set forth in Schedule IV.

SCHEDULE IV

Filed Pursuant to Rule 433
Registration No. 333-133852

BANK OF AMERICA CORPORATION

$2,000,000,000
Floating Rate Callable Senior Notes, due February 2010

FINAL TERM SHEET

Dated February 8, 2007

Issuer:	Bank of America Corporation
Ratings:	Aa2 (Moody's)/AA- (S&P)/AA- (Fitch)
Title of the Series:	Floating Rate Callable Senior Notes, due February 2010
Total Aggregate Principal Amount Initially Being Issued:	$2,000,000,000
Issue Price:	100%
Trade Date:	February 8, 2007
Settlement Date:	February 15, 2007 (DTC)
Maturity Date:	February 12, 2010
Ranking:	Senior
Minimum Denominations:	$5,000 and multiples of $5,000 in excess of $5,000
Day Count Fraction:	Actual/360
Record Dates:	For book-entry only notes, one business day prior to payment date. If notes are not held in book-entry only form, record dates will be February 1, May 1, August 1, and November 1.
Base Rate:	LIBOR Telerate Page 3750

Index Maturity:	90 days
Spread:	1 bp from, and including, the Issue Date to, but excluding August 18, 2008; 12 bps for the period from, and including, August 18, 2008 to, but excluding the Maturity Date or earlier redemption date.
Interest Payment Dates:	February 18, May 18, August 18, and November 18 of each year, beginning May 18, 2007.
Interest Periods:	Quarterly. The initial interest period will be the period from, and including, the Issue Date to, but excluding May 18, 2007, the initial interest payment date. The subsequent interest periods will be the periods from, and including, the applicable interest payment date to, but excluding, the next interest payment date.
Interest Determination Date:	Second London banking day preceding the applicable interest reset date
Interest Reset Dates:	February 18, May 18, August 18, and November 18.
Redemption:	The Issuer has the right to redeem all, but not less than all, of the notes on August 18, 2008 and on any subsequent interest payment date. The redemption price will be 100% of the principal amount of the notes, plus any accrued and unpaid interest.
Call Notification:	Notice of redemption will be mailed to the holders of the notes to be redeemed not less than 15 days nor more than 60 days prior to the redemption date.
Conversion:	The notes will not be convertible into any of our other notes or securities.
Listing:	None
Calculation Agent:	The Bank of New York Trust Company, N.A.

Lead Manager:	Banc of America Securities LLC
Co-Managers:	CastleOak Securities, L.P. Samuel A. Ramirez & Company, Inc.
CUSIP No.	060505CY8

The issuer has filed a registration statement (including a prospectus) with the SEC for the offering to which this communication relates. Before you invest, you should read the prospectus in that registration statement and other documents the issuer has filed with the SEC for more complete information about the issuer and this offering. You may obtain these documents for free by visiting EDGAR on the SEC website at www.sec.gov. Alternatively, Bank of America Corporation or the lead underwriter will arrange to send you the prospectus if you request it by contacting Bank of America Corporation, Corporate Treasury – Securities Administration, at 1-866-804-5241, or Banc of America Securities LLC, toll free at 1-800-294-1322. You may also request a copy by e-mail from securities.administration@bankofamerica.com or dg.prospectus_distribution@bofasecurities.com.

Exhibit 1.2

700,000 Preferred HITS

BAC CAPITAL TRUST XIII
(a Delaware Trust)

Floating Rate Preferred Hybrid Income Term Securities
(Liquidation Amount of $1,000 per Security)

UNDERWRITING AGREEMENT

February 12, 2007

Banc of America Securities LLC
as the Representative of the several Underwriters
c/o Banc of America Securities LLC
9 West 57th Street
New York, NY 10019

Ladies and Gentlemen:

BAC Capital Trust XIII (the "Trust"), a statutory trust organized under the Statutory Trust Act of the State of Delaware (the "Delaware Act"), 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 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 8 hereof), for whom Banc of America Securities LLC is acting as the Representative (in such capacity, the "Representative"), with respect to the sale by the Trust and the purchase by the Underwriters, acting severally and not jointly, of the respective numbers of Floating Rate Preferred Hybrid Income Term Securities (liquidation amount of $1,000 per security) of the Trust (the "Preferred HITS") set forth in Schedule A attached hereto. The Trust is authorized to issue three classes of Hybrid Income Term Securities (the "HITS"): the Preferred HITS, the Treasury HITS and the Corporate HITS. The HITS will be guaranteed on a junior 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 "HITS Guarantee") pursuant to the Guarantee Agreement, to be dated as of February 16, 2007 (the "Guarantee Agreement"), by and between the Company and The Bank of New York, as trustee (the "Guarantee Trustee"), and will be entitled to the benefits of certain back-up undertakings described in the Prospectus with respect to the Company's agreement pursuant to the Thirteenth Supplemental Indenture (as defined herein) to pay all reasonable expenses relating to administration of the Trust (other than payment obligations with respect to the HITS). The Company will enter into a Replacement Capital Covenant to be dated as of the Closing Date in favor of and for the benefit of each Covered Debtholder (as defined therein) which may be amended or supplemented from time to time in accordance with the provisions thereof (the "Replacement Capital Covenant").

The Offerors understand that the Underwriters propose to make an offering of the Preferred HITS as soon as the Representative deems advisable after this Agreement has been

executed and delivered and the Declaration (as defined herein), the Indenture (as defined herein) and the HITS Guarantee Agreement have been qualified under the Trust Indenture Act of 1939, as amended, and the rules and regulations promulgated thereunder (the "Trust Indenture Act"). The entire proceeds to the Trust from the sale of the Preferred HITS will be combined with the entire proceeds from the sale by the Trust to the Company of its common securities (the "Common Securities") and will be used by the Trust to purchase $700,100,000 in aggregate principal amount of the Remarketable Floating Rate Junior Subordinated Notes due 2043 (the "Junior Subordinated Notes") issued by the Company pursuant to the Indenture (as defined herein). The Common Securities will be guaranteed on a junior subordinated basis by the Company, to the extent set forth in the Prospectus, with respect to distributions and payments upon liquidation, redemption, and otherwise (the "Common Securities Guarantee" and, together with the HITS Guarantee, the "Guarantees") pursuant to the Common Securities Guarantee Agreement, to be dated as of February 16, 2007 (the "Common Securities Guarantee Agreement" and, together with the HITS Guarantee Agreement, the "Guarantee Agreements").

The Preferred HITS and the Common Securities will be issued pursuant to the Amended and Restated Declaration of Trust of the Trust, dated as of February 16, 2007 (the "Declaration") among the Company, as Sponsor, James T. Houghton, Ann J. Travis, and Richard L. Nichols, Jr., as trustees (the "Regular Trustees"), The Bank of New York (Delaware), a Delaware banking corporation, as Delaware trustee (the "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"), by and between the Company and The Bank of New York Trust Company, N.A. as successor trustee to The Bank of New York, as trustee (the "Debt Trustee"), as supplemented by a thirteenth supplement to the Base Indenture, to be dated as of February 16, 2007 (the "Thirteenth Supplemental Indenture," and together with the Base Indenture, the "Indenture"), by and between the Company and the Debt Trustee. The Trust will contemporaneously enter into (i) a Stock Purchase Contract Agreement (the "Stock Purchase Contract Agreement") with the Company, pursuant to which the Trust will agree to purchase 7,001 Stock Purchase Contracts (each a "Stock Purchase Contract"), each having a stated amount of $100,000 and obligating the Trust to purchase from the Company, and the Company to sell to the Trust, subject to the terms thereof, one share of the Company's Floating Rate Non-Cumulative Perpetual Preferred Stock, Series F, $100,000 liquidation preference per share (the "Preferred Stock"), on the Stock Purchase Date provided for in (and as defined in) the Stock Purchase Contract Agreement, and (ii) a Collateral Agreement (the "Collateral Agreement") with The Bank of New York Trust Company, N.A., as collateral agent (the "Collateral Agent'), under which the Trust will initially pledge the Junior Subordinated Notes to secure its obligation to purchase the Preferred Stock under the Stock Purchase Contracts. The Treasury HITS, the Corporate HITS, the Junior Subordinated Notes, the Guarantees, the Stock Purchase Contracts and the Preferred Stock are collectively referred to herein as the "Related Securities".

Capitalized terms used herein and not otherwise defined but that are defined in the Prospectus shall have the meanings specified in the Prospectus.

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) The Offerors propose to file with the Securities and Exchange Commission (the "Commission") pursuant to Rule 424(b) under the Securities Act of 1933, as amended and the rules and regulations promulgated thereunder (collectively, the "Securities Act"), a supplement to the form of prospectus included in the registration statement (referred to below) relating to the Preferred HITS and the Related Securities and the plan of distribution thereof and have previously advised you of all further information (financial and other) with respect to the Offerors to be set forth therein. Such registration statement (File No. 333-133852), including the financial statements, exhibits and schedules thereto and including any required information deemed to be a part thereof pursuant to Rule 430B under the Securities Act or the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (collectively, the "Exchange Act"), at each time of effectivness, is called the "Registration Statement." Any preliminary prospectus supplement to the base prospectus included in the Registration Statement (the "Base Prospectus") that describes the Preferred HITS and the Related Securities and the offering thereof and is used prior to filing of the Prospectus is called, together with the Base Prospectus, a "preliminary prospectus." The term "Prospectus" shall mean the final prospectus supplement relating to the Preferred HITS and the Related Securities, together with the Base Prospectus, that is first filed pursuant to Rule 424(b) after the date and time that this Agreement is executed and delivered by the parties hereto (the "Execution Time"). Any reference herein to the Registration Statement, any preliminary prospectus or the Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the Securities Act; any reference to any amendment or supplement to any preliminary prospectus or the Prospectus shall be deemed to refer to and include any documents filed after the date of such preliminary prospectus or Prospectus, as the case may be, under the Exchange Act, and incorporated by reference in such preliminary prospectus or Prospectus, as the case may be; and any reference to any amendment to the Registration Statement shall be deemed to refer to and include any annual report of the Company filed pursuant to Section 13(a) or 15(d) of the Exchange Act after the effective date of the Registration Statement that is incorporated by reference in the Registration Statement. All references in this Agreement to the Registration Statement, a preliminary prospectus, the Prospectus, or any amendments or supplements to any of the foregoing, shall include any copy thereof filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval System ("EDGAR") (except as may be permitted by Regulation S-T under the Securities Act).

(ii) The term "Disclosure Package" shall mean (i) the preliminary prospectus, as it may be amended or supplemented, (ii) the issuer free writing prospectuses as defined in Rule 433 under the Securities Act (each, an "Issuer Free Writing Prospectus"), if any, identified in Schedule C hereto and (iii) any other free writing prospectus that the parties hereto shall hereafter expressly agree in writing to treat as part of the Disclosure Package. As of 8:00 P.M. (Eastern time) on the date of this Agreement (the "Initial Sale Time"), the Disclosure Package did not contain any untrue statement of a material fact or omit to

state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements contained in or omissions from the preliminary prospectus based upon and in conformity with written information furnished to the Offerors by or on behalf of any Underwriter through the Representative specifically for use therein, it being understood and agreed that the only such information furnished by or on behalf of any Underwriter consists of the information described as such in Section 6(b) hereof (the "Underwriter Information").

(iii) As of the date hereof, when the Prospectus is first filed with the Commission pursuant to Rule 424(b) under the Securities Act, when any supplement or amendment to the Prospectus is filed with the Commission, at the Closing Time, and, with respect to the Registration Statement in (A) and (B) below, as of the Initial Sale Time, (A) the Registration Statement, as amended as of any such time, and the Prospectus, as amended or supplemented as of any such time, and the Indenture complied, complies or will comply in all material respects with the applicable provisions of the Securities Act, the Exchange Act and the Trust Indenture Act, (B) the Registration Statement, as amended as of any such time, did not, does not and will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading, and (C) the Prospectus, as amended or supplemented as of any such time, will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading; provided, however, that the Offerors make no representations or warranties as to (I) that part of the Registration Statement which shall constitute the Statements of Eligibility and Qualification of the Trustee (Form T-1) under the Trust Indenture Act of the Debt Trustee, the Property Trustee or the Guarantee Trustee or (II) the Underwriter Information. The documents which are incorporated or deemed incorporated by reference in the Disclosure Package, the Registration Statement, the preliminary prospectus or the Prospectus, when they were filed with the Commission, complied in all material respects with the requirements of the Securities Act or the Exchange Act, as applicable, and did not, when such documents were so filed, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The Commission has not issued any stop order suspending the effectiveness of the Registration Statement or any order preventing or suspending the use of the preliminary prospectus or the Prospectus and the Offerors are without knowledge that any proceedings have been instituted for either purpose.

(iv) Since the respective dates as of which information is given in the Registration Statement, the Disclosure Package and the Prospectus, except as otherwise stated therein, there has been no material adverse change in the condition (financial or other), earnings, business or properties 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.

(v) 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, is an independent registered public accounting firm as required by the Securities Act.

(vi) The Trust has been duly created and is validly existing and in good standing as a statutory trust under the Delaware Act with the power and authority to own property and to conduct its business as described in the Registration Statement, the Disclosure Package and the Prospectus and to enter into and perform its obligations under this Agreement, the HITS, the Common Securities, the Declaration and the other transaction documents to which the Trust is a party (such documents consist of the Stock Purchase Contract Agreement and the Collateral Agreement and, collectively, are referred to as the "Other Trust Transaction Agreements"); the Trust is not a party to or otherwise bound by any agreement other than those described in the Disclosure Package and the Prospectus; the Trust is and will be classified for U.S. federal income tax purposes as a grantor trust and not as an association taxable as a corporation; and the Trust is not and will not be treated as a consolidated subsidiary of the Company pursuant to generally accepted accounting principles.

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

(viii) 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 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 in all material respects to the descriptions thereof contained in the Disclosure Package and the Prospectus; and the Declaration has been duly qualified under the Trust Indenture Act.

(ix) Each of the Guarantee Agreements has been duly authorized by the Company and, when validly executed and delivered by the Company, assuming due authorization, execution and delivery of the HITS Guarantee by the Trustee thereof, 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 in all material respects to the descriptions thereof contained in the Disclosure Package and the Prospectus; and the HITS Guarantee Agreement has been duly qualified under the Trust Indenture Act.

(x) 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, the Disclosure Package and the 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, will be entitled to the benefits of the Declaration and will conform in all material respects to the descriptions thereof contained in the Disclosure Package and the Prospectus; and the issuance of the Common Securities is not subject to preemptive or other similar rights.

(xi) The Preferred HITS have been duly authorized by the Trust pursuant to the Declaration and, when issued and delivered pursuant to this Agreement and the Declaration 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 assets of the Trust, will be entitled to the benefits of the Declaration and will conform in all material respects to the descriptions thereof contained in the Disclosure Package and the Prospectus; the issuance of the Preferred HITS is not subject to preemptive or other similar rights; and, subject to the terms of the Declaration, holders of Preferred HITS will be entitled to the same limitation of personal liability under Delaware law as extended to stockholders of private corporations for profit.

(xii) The Treasury HITS and Corporate HITS have been duly authorized by the Trust pursuant to the Declaration and, if issued and delivered pursuant to the Declaration and this Agreement against payment therefor as described in the 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, will be entitled to the benefits of the Declaration and will conform in all material respects to the descriptions thereof contained in the Disclosure Package and the Prospectus; the issuance of the Treasury HITS and the Corporate HITS will not be subject to preemptive or other similar rights; and, subject to the terms of the Declaration, holders of Treasury HITS and Corporate HITS will be entitled to the same limitation of personal liability under Delaware law as extended to stockholders of private corporations for profit.

(xiii) 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.

(xiv) None of the Offerors is, and upon the issuance and sale of the Preferred HITS as herein contemplated and the application of the net proceeds therefrom as described in the Disclosure Package and 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 and the rules and regulations promulgated thereunder (collectively, the “1940 Act”).

(xv) The provisions of the Collateral Agreement are effective to create in favor of the Collateral Agent for the benefit of the Company a valid security interest under the Uniform Commercial Code as in effect in the State of New York (the “UCC”) in all “security entitlements” (as defined in Section 8-102(a)(17) of the UCC and the Federal

Book-Entry Regulations) now or hereafter carried in or to the Junior Subordinated Notes or treasury securities included in the Pledge Account (the "Pledged Securities Entitlements"); and upon possession by the Collateral Agent of the Pledged Securities Entitlements or upon the filing of a UCC Financing Statement in the proper filing office, as applicable, the Collateral Agent will have a perfected security interest, for the benefit of the Company, in the Pledged Security Entitlements. "Federal Book-Entry Regulations" means (a) the federal regulations contained in Subpart B ("Treasury/Reserve Automated Debt Entry System (TRADES)" governing Book-Entry Securities (as defined therein) consisting of U.S. Treasury bonds, notes and bills) and Section 357.41 through Section 357.44 (including related defined terms in 31 C.F.R. Section 357.2); and (b) to the extent substantially identical to the federal regulations referred to in clause (a) above (as in effect from time to time), the federal regulations governing other Book-Entry Securities.

(xvi) No authorization, approval, consent or order of any court or governmental authority or agency is necessary in connection with the execution, delivery or performance by the Trust of the Trust Transaction Agreements, or the offering, issuance and sale of the Preferred HITS, the HITS Guarantee and the Junior Subordinated Notes, the issuance of the Common Securities and the Common Securities Guarantee, the exchange of the Preferred HITS and the related issuances of the Treasury HITS and Corporate HITS in accordance with the terms of the Declaration, the purchase by the Trust of shares of Preferred Stock pursuant to the Stock Purchase Contract Agreement or the execution, delivery or performance by the Trust of any of the Other Trust Transaction Agreements, except such as may be required under the Securities Act or state securities or insurance laws, and the qualification of the Declaration, the HITS Guarantee Agreement and the Indenture under the Trust Indenture Act; provided however that the Offerors do not make any representation regarding any approval that may be required by the Federal Reserve regarding the treatment of the HITS for regulatory capital purposes, the issuance of securities and application of proceeds pursuant to the alternative payment mechanism or the Replacement Capital Covenant described in the Prospectus or any repurchase or redemption of the HITS or the Related Securities.

(xvii)(A) At the earliest time after the Offerors or another offering participant made a *bona fide* offer (within the meaning of Rule 164(h)(2) under the Securities Act) and (B) as of the date of the execution and delivery of this Agreement (with such date being used as the determination date for purposes of this clause (B)), neither Offeror was or is an Ineligible Issuer (as defined in Rule 405 under the Securities Act).

(xviii) No Issuer Free Writing Prospectus (including any Final Term Sheet), as of its issue date and at all subsequent times through the completion of the offering contemplated hereby or until any earlier date that the Company notified or notifies the Representative as described in the next sentence, included, includes or will include any information that conflicted, conflicts, or will conflict with the information contained in the Registration Statement, including any document incorporated by reference therein, the preliminary prospectus or the Prospectus, that had not or has not been superseded or modified. If at any time following issuance of an Issuer Free Writing Prospectus and prior to the end of the Prospectus Delivery Period (as defined herein), there occurred or

occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted or would conflict with the information contained in the Registration Statement or the Prospectus, the Company has promptly notified or will promptly notify the Representative and has promptly amended or supplemented or will promptly amend or supplement, at its own expense, such Issuer Free Writing Prospectus to eliminate or correct such conflict. The foregoing two sentences do not apply to statements in or omissions from an Issuer Free Writing Prospectus based upon and in conformity with Underwriter Information.

(xix) The Offerors have not distributed and will not distribute, prior to the later of the Closing Date and the completion of the Underwriters' distribution of the Preferred HITS, any offering material in connection with the offering and sale of the Preferred HITS and the Related Securities other than the Registration Statement, the preliminary prospectus, the Prospectus, and any Issuer Free Writing Prospectus reviewed and consented to by the Representative and included in Schedule C hereto.

(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 Securities 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 Securities Act and complies in all material respects with said rule.

(ii)(A) At the time of filing the Registration Statement, (B) at the time of the most recent amendment thereto for the purposes of complying with Section 10(a)(3) of the Securities Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Section 13 or 15(d) of the Exchange Act or form of prospectus), (C) at the time the Company, the Trust or any person acting on their respective behalf (within the meaning, for this clause only, of Rule 163(c) of the Securities Act) made any offer relating to the Preferred HITS and the Related Securities in reliance on the exemption under Rule 163 of the Securities Act, and (D) at the Execution Time (with such time being used as the determination time for purposes of this clause (D)), the Company was and is a "well-known seasoned issuer" as defined in Rule 405 under the Securities Act. The Registration Statement is an "automatic shelf registration statement," as defined in Rule 405 under the Securities Act, neither the Company nor the Trust has received from the Commission any notice pursuant to Rule 401(g)(2) under the Securities Act objecting to use of the automatic shelf registration statement form and the Company has not otherwise ceased to be eligible to use the automatic shelf registration statement form.

(iii) The Company has complied and will comply with all the provisions of Florida H.B. 1771, codified asSection 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 suchSection 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.

(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 (A) to own, lease and operate its properties and to conduct its business as described in the Disclosure Package and the Prospectus, (B) to enter into and perform its obligations under this Agreement, the Declaration, as Sponsor, the Indenture, each of the Guarantee Agreements, the Remarketing Agreement (as defined herein) and each of the Other Company Transaction Agreements (as defined herein), (C) to purchase, own and hold the Common Securities issued by the Trust and (D) to issue and deliver on the Stock Purchase Date certificates representing the Preferred Stock to be then issued; 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. (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 in all material respects to the descriptions thereof contained in the Disclosure Package and the Prospectus; and the Indenture has been duly qualified under the Trust Indenture 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 Disclosure Package and the 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 in all material respects to the descriptions thereof contained in the Disclosure Package and the Prospectus.

(viii) The shares of Preferred Stock to be issued by the Company to the Trust under the Stock Purchase Contracts on the Stock Purchase Date have been duly authorized by the Company and the Company has reserved for issuance out of its authorized capital stock the maximum number of shares of Preferred Stock issuable under the Stock Purchase Contracts; the Preferred Stock, when issued and delivered against payment therefor as provided in the Stock Purchase Contract Agreement and as provided in the Company's Certificate of Designations relating to the Preferred Stock (the "Certificate of Designations") will be duly and validly issued and fully paid and non-assessable and will conform in all material respects to the descriptions thereof contained in the Disclosure Package and the Prospectus.

(ix) Each of the Guarantee Agreements, the Stock Purchase Contract Agreement, the Collateral Agreement, the Replacement Capital Covenant, and that certain Note Purchase Agreement entered into between the Company and the Trust on the date hereof (the "Note Purchase Agreement") (collectively, the "Other Company Transaction Agreements" and, together with this Agreement, the Declaration, the Indenture and the Junior Subordinated Notes, the "Company Transaction Agreements") 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 Other Company Transaction Agreements will conform in all materials respects to the descriptions thereof contained in the Disclosure Package and the Prospectus.

(x) 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.

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

(xii) 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.

(xiii) No authorization, approval, consent or order of any court or governmental authority or agency is necessary in connection with the execution, delivery or performance by the Company of any of the Company Transaction Agreements or the Remarketing Agreement or the issuance of the Preferred Stock in accordance with the Stock Purchase Contract Agreement, except such as may be required under the Securities Act or state securities or insurance laws and the qualification of the HITS Guarantee Agreement under the Trust Indenture Act; provided however that the Company does not make any representation regarding any approval that may be required by the Federal Reserve regarding the treatment of the HITS for regulatory capital purposes, the issuance of securities and application of proceeds pursuant to the alternative payment mechanism and the Replacement Capital Covenant described in the Prospectus or any repurchase or redemption of the HITS or the Related Securities.

(xiv) The Remarketing Agreement to be entered into between the Company and the agent named therein (the "Remarketing Agreement") 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 Remarketing Agreement will conform in all material respects to the descriptions thereof contained in the Disclosure Package and the Prospectus.

(xv) The execution, delivery and performance of the Company Transaction Agreements and the consummation of the transactions contemplated therein and compliance by the Company with its obligations thereunder 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 either 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 violation of the provisions of the amended and restated certificate 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 Underwriters 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 follows:

(i) Since the respective dates as of which information is given in the Registration Statement, the Disclosure Package and the Prospectus, except as otherwise stated therein, (A) there has been no material adverse change in the condition (financial or other), earnings, business or properties of the Trust, whether or not arising from transactions 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 to the Trust.

(ii) Except as disclosed in the Disclosure Package and 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 Disclosure

Package and 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 other), earnings, business or properties of the Trust, whether or not arising from transactions 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 Securities Act that either have not been so filed or will not have been filed after the date hereof within the time periods prescribed by the Securities Act.

(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, individually or in the aggregate, if the subject of an unfavorable decision, ruling or finding would materially and adversely affect the condition (financial or other), earnings, business or properties of the Trust.

(iv) Each of the Other Trust Transaction Agreements (collectively with this Agreement, the "Trust Transaction Agreements") has been duly authorized, executed and delivered by the Trust and will constitute a valid and legally binding instrument of the Trust, enforceable against the Trust in accordance with its terms, except to the extent that enforcement thereof may be limited by the Permitted Exceptions, and each of the Other Trust Transaction Agreements will conform in all material respects to the descriptions thereof in the Disclosure Package and the Prospectus.

(v) The execution, delivery and performance of this Agreement, the Other Trust Transaction Agreements and the Declaration, the issuance and sale of the Preferred HITS 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 on the part of the Trust and do not and will not result in any violation of the Declaration or the Certificate of Trust for the Trust dated as of May 3, 2006 (the "Certificate of Trust") and do not and will not conflict with, or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Trust under (A) any contract, indenture, mortgage, loan agreement, note, lease or other agreement or instrument to which the Trust is a party or by which it may be bound or to which any of its properties may be subject or (B) any existing applicable law, rule, regulation, judgment, order or decree of any government, governmental instrumentality or court, domestic or foreign, or any regulatory body or administrative agency or other governmental body having jurisdiction over the Trust or any of its properties.

(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.

(f) Each Underwriter, severally and not jointly, represents and agrees that:

(1) it will comply with all applicable rules of the National Association of Securities Dealers, Inc. (the "NASD"); and

(2) it has not and will not, directly or indirectly, offer, sell or deliver any of the Preferred HITS or distribute the preliminary prospectus, the Prospectus or any other offering materials relating to the Preferred HITS (including any free writing prospectuses) in or from any jurisdiction except under circumstances that will, to the best of its knowledge and belief, result in compliance with any applicable laws and regulations thereof.

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 and not jointly, and each Underwriter, severally and not jointly, agrees to purchase from the Trust, at the price per security set forth in Schedule B, the number of Preferred HITS set forth in Schedule A opposite the name of such Underwriter (except as otherwise provided in Schedule B), plus any additional number of Preferred HITS that such Underwriter may become obligated to purchase pursuant to the provisions of Section 8 hereof.

The purchase price per security to be paid by the several Underwriters for the Preferred HITS shall be an amount equal to the initial public offering price. The initial public offering price per Preferred HITS and the purchase price per Preferred HITS 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 Preferred HITS will be used to purchase the Junior Subordinated Notes of the Company, the Company hereby agrees to pay at the Closing Time to the Underwriters, a commission per Preferred HITS determined by agreement between the Representative and the Company for the Preferred HITS to be delivered by the Trust hereunder at the Closing Time. The commission is set forth in Schedule B.

(b) Payment of the purchase price for, and delivery of certificates for, the Preferred HITS shall be made at the offices of Morrison & Foerster LLP, or at such other place as shall be agreed upon by the Representative, the Company and the Trust, at 9:00 A.M. New York time on the fourth (4^{th}) 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 Representative, the Trust and the Company (such time and date of payment and delivery being herein called the "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 Representative for the respective accounts of the Underwriters of certificates for the Preferred HITS to be purchased by them. Unless otherwise agreed, certificates for the Preferred HITS 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.

(c) 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 Representative in same day funds.

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

(a) During the period beginning on the Initial Sale Time and ending on the later of the Closing Date or such date, as in the opinion of counsel for the Underwriters, the Prospectus is no longer required by law to be delivered in connection with sales by an Underwriter or dealer (except for delivery requirements imposed because such Underwriter or dealer is an affiliate of the Company or the Trust), including in circumstances where such requirement may be satisfied pursuant to Rule 172 (the "Prospectus Delivery Period"), the Offerors will notify the Representative 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 Disclosure Package, the Prospectus or any document filed pursuant to the Exchange Act which will be incorporated by reference in the preliminary prospectus or the Prospectus, or any amendment or supplement thereto, (iii) of the receipt of any comments from the Commission with respect to the Registration Statement, the Disclosure Package or the Prospectus (other than with respect to a document filed with the Commission pursuant to the Exchange Act which will be incorporated by reference in the Registration Statement, the preliminary prospectus and the Prospectus), (iv) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Disclosure Package or 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 Exchange Act which will be incorporated by reference in the Registration Statement, the preliminary prospectus and the 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 Preferred HITS, the Offerors (1) will give the Representative notice of their intention to file or prepare (i) any amendment to the Registration Statement (including any post-effective amendment) (other than with respect to a document filed with the Commission pursuant to the Exchange Act which will be incorporated by reference in the Registration Statement, the preliminary prospectus and Prospectus that is not filed to correct a misstatement, an omission or non-compliance that is the subject of a notice delivered to the Underwriters pursuant to paragraph (e) below (a "Periodic Filing")), or (ii) any amendment or supplement to the Disclosure Package or the Prospectus (including any revised prospectus which the Offerors propose for use by the Underwriters in connection with the offering of the Preferred HITS 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) under the Securities Act) (other than with respect to a Periodic Filing), will furnish the Representative 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 Representative with copies of any document that will be incorporated by reference in the preliminary prospectus or the Prospectus whether pursuant to the Securities Act, the Exchange Act or otherwise. Subject to the foregoing, the Offerors will file the preliminary prospectus and the Prospectus pursuant to Rule 424(b) under the Securities Act within the time required by such rule.

(c) The Offerors will deliver to the Representative as many conformed copies of the Registration Statement as originally filed and of each amendment thereto (including exhibits filed therewith or incorporated by reference therein and documents incorporated or deemed to be incorporated by reference therein) as the Representative may reasonably request.

(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 Securities Act, such number of copies of the Prospectus (as amended or supplemented) as such Underwriter may reasonably request for the purposes contemplated by the Securities Act.

(e) If at any time when the Prospectus is required by the Securities Act to be delivered in connection with sales of the Preferred HITS, 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 Disclosure Package or 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 misleading, or if it shall be necessary to amend or supplement the Disclosure Package or the Prospectus in order to comply with the requirements of the Securities Act, 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 (including, if consented to by the Representative, by means of an Issuer Free Writing Prospectus), give immediate notice, and confirm in writing, to the Underwriters to cease the solicitation of offers to purchase the Preferred HITS, 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 Preferred HITS and the Related Securities 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 neither 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 Securities Act) of the Registration Statement, which will satisfy the provisions of Section 11(a) of the Securities Act.

(h) The Offerors will use reasonable efforts to effect the listing of the Preferred HITS on the New York Stock Exchange.

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

(j) Until the business day following the Closing Date, neither the Company nor the Trust will, without the consent of the Representative, offer or sell, or announce the offering of, any additional securities covered by the Registration Statement or by any other registration statement filed under the Act; provided, however, the Company may, at any time, offer or sell or announce the offering of any securities (A) covered by a registration statement on Form S-8 or (B) covered by a registration statement on Form S-3 and (i) pursuant to which the Company issues securities under one of the Company's medium-term note programs (including, without limitation, the Company's Series K Medium-Term Notes program and the Company's InterNotes program), (ii) pursuant to which the Company issues securities for its dividend reinvestment plan, (iii) pursuant to which affiliates of the Company offer securities of the Company in secondary market transactions, (iv) 5.63% Fixed to Floating Rate Preferred Hybrid Income Trust Securities to be issued by BAC Capital Trust XIV pursuant to the Registration Statement in an underwritten offering in which the lead manager is Banc of America Securities LLC or (v) $2,000,000,000 Floating Rate Callable Senior Notes, due February 2010, to be issued by the Company pursuant to the Registration Statement in an underwritten offering in which the lead manager is Banc of America Securities LLC.

(k) The Offerors will prepare a final term sheet containing only a description of the Preferred HITS and the Related Securities, in a form approved by the Representative and contained in Schedule D of this Agreement, and will file such term sheet pursuant to Rule 433(d) under the Securities Act as promptly as possible, but in any case not later than the time required by such rule (such term sheet, the "Final Term Sheet"). Any such Final Term Sheet is an Issuer Free Writing Prospectus for purposes of this Agreement.

(l) The Offerors represent that each has not made, and agree that, unless they obtain the prior written consent of the Representative, they will not make, any offer relating to the Preferred HITS or the Related Securities that would constitute an Issuer Free Writing Prospectus or that would otherwise constitute a "free writing prospectus" (as defined in Rule 405 of the Securities Act) required to be filed by an Offeror with the Commission or retained by an Offeror under Rule 433 under the Securities Act; provided that the prior written consent of the Representative shall be deemed to have been given in respect of the Issuer Free Writing Prospectuses included in Schedule C hereto. Any such free writing prospectus consented to by the Representative is hereinafter referred to as a "Permitted Free Writing Prospectus." The Offerors agree that (i) they have treated and will treat, as the case may be, each Permitted Free Writing Prospectus as an Issuer Free Writing Prospectus, and (ii) they have complied and will comply, as the case may be, with the requirements of Rules 164 and 433 under the Securities Act applicable to any Permitted Free Writing Prospectus, including in respect of timely filing with the Commission, legending and record keeping. The Offerors consent to the use by any Underwriter of a free writing prospectus that (a) is not an "issuer free writing prospectus" as defined in Rule 433, and (b) contains only (i) information describing the preliminary terms of the Preferred HITS or their offering, (ii) information that describes the final terms of the Preferred HITS or their offering and that is included in the Final Term Sheet of the Offerors contemplated in paragraph (k) above or (iii) information permitted by Rule 134 of the Securities Act.

(m) If immediately prior to the third anniversary (the "Renewal Deadline") of the initial effective date of the Registration Statement, any of the Preferred HITS remain unsold by the Underwriters or any of the Treasury HITS or Corporate HITS are outstanding, the Company and the Trust will prior to the Renewal Deadline file, if they have not already done so and the Company is eligible to do so, a new automatic shelf registration statement relating to the HITS, in a form satisfactory to the Representatives. If the Company is no longer eligible to file an automatic shelf registration statement, the Company and the Trust will prior to the Renewal Deadline, if it has not already done so, file a new shelf registration statement relating to the HITS, in a form satisfactory to the Representatives, and will use their best efforts to cause such registration statement to be declared effective within 60 days after the Renewal Deadline. The Company and the Trust will take all other action necessary or appropriate to permit the public offering and sale of the Preferred HITS to continue as contemplated in the expired registration statement relating to the HITS. References herein to the Registration Statement shall include such new automatic shelf registration statement or such new shelf registration statement, as the case may be.

(n) If at any time when Preferred HITS remain unsold by the Underwriters or any of the Treasury HITS or Corporate HITS are outstanding, the Company or the Trust receives from the Commission a notice pursuant to Rule 401(g)(2) under the Securities Act or the Company otherwise ceases to be eligible to use the automatic shelf registration statement form, the Company will (i) promptly notify the Representatives, (ii) promptly file a new registration statement or post-effective amendment on the proper form relating to the HITS, in a form satisfactory to the Representatives, (iii) use its best efforts to cause such registration statement or post-effective amendment to be declared effective and (iv) promptly notify the Representatives of such effectiveness. The Company and the Trust will take all other action necessary or appropriate to permit the public offering and sale of the Preferred HITS to continue as contemplated in the registration statement that was the subject of the Rule 401(g)(2) notice or for which the Company has otherwise become ineligible. References herein to the Registration Statement shall include such new registration statement or post-effective amendment, as the case may be.

(o) The Company agrees to pay the required Commission filing fees relating to the Preferred HITS and the Related Securities within the time required by Rule 456(b)(1) under the Securities Act without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r) under the Securities Act.

(p) The Offerors will apply the net proceeds from the sale of the Preferred HITS sold by them in the manner described under the caption "Use of Proceeds" in each of the preliminary prospectus and the Prospectus.

SECTION 4. PAYMENT OF EXPENSES. The Company will pay all expenses incident to the performance of each Offeror's obligations under this Agreement, and will pay for: (i) the preparation, filing, printing, and delivery to the Underwriters of copies of the Registration Statement, any Issuer Free Writing Prospectus, the preliminary prospectus and the Prospectus as originally filed and of each amendment or supplement thereto, (ii) the copying of this Agreement, (iii) the preparation, issuance and delivery of the certificates for the Preferred HITS and the Related Securities, including capital duties, stamp duties and transfer taxes, if any,

payable upon issuance of any of the Preferred HITS or the Related Securities (excluding any fees and expenses relating to the exchange of Preferred HITS for Treasury HITS and Corporate HITS and the exchange of Treasury HITS and Corporate HITS for Preferred HITS) or the sale of the Preferred HITS or the Related Securities, (iv) the fees and disbursements of the Company's and the Trust's counsel and accountants, (v) the qualification of the Preferred HITS or the Related Securities under applicable securities laws in accordance with the provisions of Section 3(f) hereof, including filing fees and the fees and disbursements of Morrison & Foerster LLP, counsel for the Underwriters, in connection therewith and in connection with the preparation of any blue sky survey, (vi) the printing and delivery to the Underwriters of copies of any blue sky survey, (vii) any fee of 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 preparation, printing, reproduction and delivery to the Underwriters of copies of the Indenture, the Declaration, the Certificate of Trust, the Guarantee Agreements, the Collateral Agreement and the Replacement Capital Covenant, (x) the fees and expenses of the Property Trustee, the Delaware Trustee and the Guarantee Trustee, including the fees and disbursements of counsel for the Property Trustee, the Delaware Trustee and the Guarantee Trustee in connection with the Declaration and the Certificate of Trust and the Guarantee Agreements and the Guarantees, as applicable, (xi) any fees payable in connection with the rating of the Preferred HITS and Junior Subordinated Notes, (xii) the cost and charges of any transfer agent or registrar, (xiii) the fees and expenses incurred in connection with the listing of the Preferred HITS and, if applicable, the Related Securities on the New York Stock Exchange, and (xiv) the cost of qualifying the HITS and the Junior Subordinated Notes with DTC.

If this Agreement is terminated by the Representative in accordance with the provisions of Section 5 or Section 7 hereof, the Company shall reimburse the Underwriters for all of their reasonable out-of-pocket expenses, including the reasonable fees and disbursements of Morrison & Foerster LLP, counsel for the Underwriters.

SECTION 5. CONDITIONS OF UNDERWRITERS' OBLIGATIONS. The obligations of the Underwriters hereunder are subject to the accuracy of the respective 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 respective obligations hereunder, and to the following further conditions:

(a) For the period from and after effectiveness of this Agreement and through to the Closing Date:

(i) no stop order suspending the effectiveness of the Registration Statement, or any post-effective amendment to the Registration Statement, shall be in effect and no proceedings for such purpose shall have been instituted or threatened by the Commission, and the Company and the Trust shall not have received from the Commission any notice pursuant to Rule 401(g)(2) under the Securities Act objecting to use of the automatic shelf registration statement form (unless the HITS and the Related Securities are duly registered in the manner contemplated by Rule 401(g)(2) to the satisfaction of the Representatives prior to the Closing Date);

(ii) the Company shall have filed the preliminary prospectus and the Prospectus with the Commission (including the information required by Rule 430B under the Securities Act) in the manner and within the time period required by Rule 424(b) under the Securities Act; or the Company shall have filed a post-effective amendment to the Registration Statement containing the information required by such Rule 430B, and such post-effective amendment shall have become effective (if not automatically effective under the rules of the Commission);

(iii) the Final Term Sheet, and any other material required to be filed by the Company pursuant to Rule 433(d) under the Securities Act, shall have been filed with the Commission within the applicable time periods prescribed for such filings under such Rule or, to the extent applicable, under Rule 164(b); and

(iv) the NASD shall have raised no objection to the fairness and reasonableness of the underwriting terms and arrangements.

(b) On or before the Closing Time, at least one "nationally recognized statistical rating organization" (as defined for purposes of Rule 436(g) under the Securities Act), shall have rated the Preferred HITS in one of its four highest rating categories and (i) no downgrading shall have occurred in the rating accorded the Company's debt securities by any such nationally recognized statistical rating organization, and (ii) no such organization shall have publicly announced that it has under surveillance or review, with possible negative implications, its rating of any of the Company's debt securities.

(c) At the Closing Time, the Representative shall have received:

(1) The favorable opinion of Helms Mulliss & Wicker, PLLC, counsel for the Company and the Trust, dated as of the Closing Time, to the effect of paragraphs (i) and (v) through (xx) below, and the favorable opinion of the General Counsel to the Company (or such other attorney in such department, reasonably acceptable to counsel to the Underwriters, who exercises general supervision or review in connection with a particular securities law matter for 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 and conduct its business as described in the Disclosure Package and the Prospectus, 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) The Company and the Principal Subsidiary Bank are qualified or licensed to do business as a foreign corporation in any jurisdiction in which such counsel 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. § 55, as amended) non-assessable, and, except as otherwise set forth in the Disclosure Package and the Prospectus, all outstanding shares of capital stock of the Principal Subsidiary Bank (except directors' qualifying shares) are owned beneficially, directly or indirectly, by the Company free and clear of any perfected security interest and such counsel is without knowledge of any other security interests, claims, liens or encumbrances.

(iv) Such counsel is without knowledge that (1) there is any 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, the Disclosure Package or the Prospectus which is omitted or not adequately disclosed therein, or (2) any franchise, contract or other document of a character required to be described in the Registration Statement, the Disclosure Package or the Prospectus, or to be filed as an exhibit to the Registration Statement, is not so described or filed or will not be filed within the time periods prescribed by the Securities Act as required.

(v) The Registration Statement has become effective under the Securities Act; no stop order suspending the effectiveness of the Registration Statement, or any post-effective amendment to the Registration Statement, has been issued and such counsel is without knowledge that any proceeding for that purpose has been instituted or threatened, or that the Company or the Trust has received from the Commission any notice pursuant to Rule 401(g)(2) under the Securities Act objecting to the use of the automatic shelf registration statement form; the Registration Statement, the Disclosure Package and 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 Securities Act, the Exchange Act and the Trust Indenture Act.

(vi) This Agreement has been duly authorized, executed and delivered by the Company and, assuming due authorization, execution and delivery by you, constitutes a legal, valid and binding agreement of the Company enforceable against the Company in accordance with its terms, except to the extent enforcement thereof may be limited by 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 any court or governmental authority or agency or body in the United States is necessary or required on behalf of the Company or the Trust in connection with the execution, delivery or performance of the Company Transaction Documents or the Trust Transaction Documents or the offering, issuance or sale of the Preferred HITS, the HITS Guarantee and the Junior Subordinated Notes, the issuance of the Common Securities and the Common Securities Guarantee, the exchange of the Preferred HITS and the related issuances of the Treasury HITS and Corporate HITS in accordance with the terms of the Declaration, or the purchase by the Trust of shares of Preferred Stock pursuant to the Stock Purchase Contract Agreement

except (A) such as may be required under the Securities Act and such as may be required under the blue sky, state securities, insurance or similar laws of the United States, and (B) the qualification of the Declaration, the HITS Guarantee Agreement and the Indenture under the Trust Indenture Act; provided however that such counsel need not opine regarding any approval that may be required by the Federal Reserve regarding the treatment of the HITS for regulatory capital purposes, the issuance of securities and application of proceeds pursuant to the alternative payment mechanism or the Replacement Capital Covenant described in the Prospectus or any repurchase or redemption of the HITS or the Related Securities.

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

(ix) Each of the Guarantee Agreements, the Stock Purchase Contract Agreement, the Replacement Capital Covenant, the Note Purchase Agreement and the Collateral Agreement has been duly authorized, executed and delivered by the Company; and assuming due authorization, execution and delivery by each of the parties thereto other than the Company, each 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; the Remarketing Agreement has been duly and validly authorized; and the HITS Guarantee Agreement has been duly qualified under the Trust Indenture Act. The Guarantee Agreements, the Stock Purchase Contract Agreement, the Replacement Capital Covenant, the Note Purchase Agreement and the Collateral Agreement each conform in all material respects to the descriptions thereof in the Disclosure Package and the Prospectus.

(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 Trust Indenture Act; and the Indenture conforms in all material respects to the description thereof in the Disclosure Package and the Prospectus.

(xi) The Junior Subordinated Notes have been duly authorized and when executed and authenticated 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 Disclosure Package and the Prospectus.

(xii) The shares of Preferred Stock to be issued by the Company to the Trust under the Stock Purchase Contracts on the Stock Purchase Date have been duly and validly authorized and the Company has reserved for issuance out of its authorized capital stock the maximum number of shares of Preferred Stock issuable under the Stock

Purchase Contracts; the Preferred Stock, when certificates evidencing the shares of Preferred Stock have been executed by the Company and authenticated by the Company's transfer agent and issued and delivered against payment therefor as provided in the Stock Purchase Contract Agreement and as provided in the Certificate of Designations will be duly and validly issued and fully paid and non-assessable and will conform in all material respects to the descriptions thereof in the Disclosure Package and the Prospectus.

(xiii) The provisions of the Collateral Agreement are effective to create in favor of the Collateral Agent for the benefit of the Company a valid security interest under the UCC in all Pledged Securities Entitlements; upon possession by the Collateral Agent of the Pledged Securities Entitlements or upon the filing of a UCC Financing Statement in the proper filing office, as applicable, the Collateral Agent will have a perfected security interest, for the benefit of the Company, in the Pledged Security Entitlements.

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

(xv) The forms of the Common Securities, the Preferred HITS and the Declaration conform in all material respects to the descriptions thereof contained in the Disclosure Package and the Prospectus.

(xvi) 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.

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

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

(xix) The execution, delivery and performance of the Company Transaction Agreements, including the issuance and sale of the Junior Subordinated Notes and the Guarantees, and the consummation of the transactions therein contemplated will not conflict with, result in a breach of, or constitute a default under the certificate of incorporation or by-laws of the Company or (1) the terms of any indenture or other material agreement or instrument known to such counsel and to which the Company or the Principal Subsidiary Bank is a party or bound, or (2) any order, law 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.

(xx) If the Preferred HITS are to be listed on the New York Stock Exchange, authorization therefore has been given, subject to official notice of issuance and evidence of satisfactory distribution, or the Offerors have filed a preliminary listing application

with respect to the Preferred HITS with the New York Stock Exchange and such counsel has received no information stating that the Preferred HITS will not be authorized for listing, subject to official notice of issuance and evidence of satisfactory distribution.

In giving their opinions required by this Section, but without opining in connection therewith, such counsel also shall state, that although such counsel expresses no view as to portions of the Registration Statement, the Disclosure Package or the Prospectus consisting of financial statements and other financial, accounting, and statistical information and such counsel 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, the Disclosure Package or the Prospectus or any amendment or supplement thereto (other than as stated in (ix), (x), (xi), (xii) and (xv) above), such counsel has no reason to believe that such remaining portions of the Registration Statement or any amendment thereto as of the time it became effective, the Initial Sale Time, and as of the date of such counsel's opinion, contained or contains 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, subject to the foregoing with respect to financial statements and other financial, accounting and statistical information, the Disclosure Package, as of the Initial Sale Time, contained an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of circumstances under which they were made, not misleading, or that the Prospectus, as amended or supplemented, as of its date and as of the date of such opinion, contained or contains an untrue statement of a material fact or omitted or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

In rendering such opinions, such counsel may rely (A) as to matters involving the application of laws of any jurisdiction other than the State of North Carolina, the General Corporate Law of 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, the Stock Purchase Contract Agreement, the Collateral Agreement, the Remarketing Agreement, the Replacement Capital Covenant, the Note Purchase Agreement and that certain subscription agreement, of even date herewith, between the Company and the Trust covering the Common Securities 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 statutory 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 statutory trust have been made; the Trust has all necessary power and authority to (a) own property and to conduct its business as described in the Registration Statement, the Disclosure Package and the Prospectus, (b) to enter into and perform its obligations under this

Agreement, the Collateral Agreement, the Stock Purchase Contract Agreement, the Note Purchase Agreement and the Declaration and (c) to issue and perform its obligations under the HITS 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 upon execution and delivery in accordance with the terms of the Declaration will be validly issued and represent undivided beneficial interests in the assets of the Trust.

(iv) The Preferred HITS have been duly authorized by the Declaration and, subject to the terms of the Declaration, when delivered to and paid for by the Underwriters pursuant to this Agreement, will be duly and validly issued, and (subject to the qualifications set forth in this paragraph) fully paid and non-assessable undivided beneficial interests in the assets of the Trust; the holders of the Preferred HITS 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 Preferred HITS is not subject to preemptive or other similar rights. The Holders may be obligated, pursuant to the Declaration, to (i) provide indemnity and/or security in connection with and pay taxes or governmental charges arising from the transfer or exchange of HITS certificates and the issuance of replacement HITS certificates and (ii) provide security or indemnity in connection with requests of or directions to the Property Trustee to exercise its rights and remedies under the Declaration.

(v) The Treasury HITS and the Corporate HITS have been duly authorized by the Declaration and when issued upon an Exchange (as defined in the Declaration) in accordance with the terms of the Declaration, will be duly and validly issued, and (subject to the qualifications set forth in the last sentence of paragraph (iv) above) will be fully paid and non-assessable undivided beneficial interests in the assets of the Trust; the holders of the Treasury HITS and Corporate HITS 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 Treasury HITS and the Corporate HITS is not subject to preemptive or other similar rights.

(vi) This Agreement, the Collateral Agreement and the Stock Purchase Contract Agreement have been duly authorized by the Trust.

(vii) The issuance and sale by the Trust of the Preferred HITS and the Common Securities and the issuance of the Treasury HITS and Corporate HITS upon an Exchange in accordance with the terms of the Declaration, the execution, delivery and performance by the Trust of this Agreement, the Collateral Agreement and the Stock Purchase Contract Agreement, the consummation by the Trust of the transactions contemplated

hereby and thereby and the compliance by the Trust with its obligations hereunder and thereunder 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.

(viii) No authorization, approval, consent or order of any Delaware court or Delaware governmental authority or Delaware agency is necessary or required on behalf of the Trust in connection with the execution, delivery or performance of the Underwriting Agreement, the Collateral Agreement and the Stock Purchase Contract Agreement, or the offering, issuance or sale of the Preferred HITS, the issuance of the Common Securities, the Exchange of the Preferred HITS and the related issuances of the Treasury HITS and Corporate HITS in accordance with the terms of the Declaration, or the purchase by the Trust of shares of Preferred Stock pursuant to the Stock Purchase Contract Agreement.

(ix) The issuance by the Company of Preferred Stock pursuant to the Stock Purchase Contract Agreement and the Certificate of Designations has been duly authorized and, when certificates evidencing the shares of Preferred Stock have been executed by the Company and authenticated by the Company's transfer agent in the manner provided for in the Stock Purchase Contract Agreement and delivered on the Stock Purchase Date, such shares will be duly and validly issued, fully paid and non-assessable.

(x) Assuming that the Trust derives no income from or connected with services provided within the State of Delaware and has no assets, activities (other than maintaining the Delaware Trustee and the filing of documents with the Secretary of State of the State of Delaware) or employees in the State of Delaware and assuming that the Trust is treated as a grantor trust or as an association not taxable as a corporation for federal income tax purposes, the holders of HITS (other than those holders who reside or are domiciled in the State of Delaware) will have no liability for income taxes imposed by the State of Delaware solely as a result of their participation in the Trust, and the Trust will not be liable for any income tax imposed by the State of Delaware.

(3) The favorable opinion of Richards, Layton & Finger, P.A., relating to The Bank of New York (Delaware), as Delaware Trustee under the Declaration, 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 have 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 necessary or required for the execution, delivery or performance by the Delaware Trustee of the Declaration.

(4) The favorable opinion, dated as of the Closing Time, of Emmet, Marvin & Martin, LLP, counsel to The Bank of New York Trust Company, N.A., as Debt Trustee under the Indenture, and to the Bank of New York, as Guarantee Trustee under the HITS 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 Trust Company, N.A. duly organized and is validly existing as a national banking association organized and in good standing under the laws of the United States with all necessary power and authority to execute and deliver, and to carry out and perform its obligations under the terms of the Indenture. 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 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 and the HITS 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 HITS 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 HITS 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 HITS 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 federal banking authority is necessary or 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 necessary or 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 HITS Guarantee Agreement.

(5) The favorable opinion, dated as of the Closing Time, of Morrison & Foerster 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 and with respect to the Preferred HITS and the Related Securities, the Indenture, this Agreement, the Registration Statement, the Disclosure Package, the Prospectus and any other related matters as the Representative may require.

In giving its opinion, Morrison & Foerster LLP may rely as to certain matters of (i) Delaware law upon the opinion of Richards, Layton & Finger P.A., counsel for the Offerors, which shall be delivered in accordance with Section 5(c)(2) hereto and (ii) North Carolina law upon the opinion of Helms Mulliss & Wicker, PLLC, which shall be delivered in accordance with Section 5(c)(1) hereto.

(6) The favorable opinion of Morrison & Foerster LLP, special tax counsel to the Company and the Trust, as to certain federal tax matters set forth in the Disclosure Package and the Prospectus under "Certain U.S. Federal Income Tax Consequences"

(d) At the 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, the Disclosure Package and the Prospectus, any material adverse change, or any development involving a prospective material adverse change, in the condition (financial or other), earnings, business or properties 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 Disclosure Package and the Prospectus and the Representative 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 the Closing Time, to the effect that the signers of such certificate have carefully examined the Registration Statement, the Disclosure Package, the Prospectus and this Agreement and they are without knowledge that: (i) there has been any material adverse change or any development involving a prospective material adverse change in the condition (financial or other), earnings, business or properties 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 Disclosure Package and the Prospectus, (ii) the representations and warranties in Section 1 hereof are not true and correct with the same force and effect as though expressly made at and as of the Closing Time, (iii) the Trust or the Company, as the case may be,

has not performed or complied with all agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to the Closing Time, (iv) any stop order suspending the effectiveness of the Registration Statement has been issued or any proceedings for that purpose have been initiated or threatened by the Commission, and (v) any litigation or proceeding shall be threatened or pending to restrain or enjoin the issuance or delivery of the Preferred HITS, or which in any way affects the validity of the Preferred HITS or the Related Securities.

(e) At the time this Agreement is executed, PricewaterhouseCoopers LLP shall have furnished to the Representative a letter or letters, dated the date of this Agreement, in form and substance satisfactory to the Representative, stating in effect that:

(1) They are an independent registered public accounting firm with respect to the Company within the meaning of the Securities Act and the applicable rules and regulations thereunder adopted by the Commission and the Public Company Accounting Oversight Board (United States).

(2) 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, the preliminary prospectus and the Prospectus comply as to form in all material respects with the applicable accounting requirements of the Securities Act and the Exchange Act.

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

(i) Reading the minutes of the meetings of the stockholders, the board of directors, executive committee and audit committee of the Company and the board of directors of the Principal Subsidiary Bank 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;

(ii) Performing the procedures specified by the American Institute of Certified Public Accountants for a review of interim financial information as described in Statement of Accounting Standards No. 100, 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, the preliminary prospectus and the 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, the preliminary prospectus and the Prospectus to the date of the latest available interim financial data; and

(iii) 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:

(a) the unaudited condensed consolidated interim financial statements, included or incorporated by reference in the Registration Statement, the preliminary prospectus and the Prospectus, do not comply as to form in all material respects with the applicable accounting requirements of the Exchange Act;

(b) any material modifications should be made to the unaudited condensed consolidated interim financial statements, included or incorporated by reference in the Registration Statement, the preliminary prospectus and the Prospectus, for them to be in conformity with generally accepted accounting principles;

(c)(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 common stock and additional paid-in capital or the consolidated long-term debt (other than scheduled repayments of such debt) 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, the preliminary prospectus 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 common stock and additional paid-in capital or the consolidated long-term debt (other than scheduled repayments of such debt) of the Company and the subsidiaries on a consolidated basis, except in all instances for changes or decreases which the Registration Statement, the preliminary prospectus and the Prospectus discloses have occurred or may occur, or PricewaterhouseCoopers LLP shall state any specific changes or decreases.

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, the preliminary prospectus and the Prospectus and which are specified by the Representative 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 Closing Time, PricewaterhouseCoopers LLP shall have furnished to the Representative a letter or letters, dated the Closing Date, in form and substance satisfactory to the Representative, to the effect set forth in this subsection (e).

(f) Subsequent to the respective dates as of which information is given in the Registration Statement, the Disclosure Package and the Prospectus, there shall not have been (i) any change or decrease specified in the letter or letters referred to in the immediate prior sub-section or (ii) any change, or any development involving a prospective change, in or affecting the condition (financial or other), earnings, business or properties of the Trust or the Company and its subsidiaries, considered as one enterprise, the effect of which, in any case referred to in clause (i) or (ii) above, is, in the judgment of the Representative, so material and adverse as to make it impractical or inadvisable to proceed with the offering or the delivery of the Preferred HITS and the Related Securities as contemplated by the Registration Statement, the Disclosure Package and the Prospectus.

(g) At the 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 Preferred HITS and the Related 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 Preferred HITS and the Related Securities as herein contemplated shall be satisfactory in form and substance to the Representative and Morrison & Foerster LLP, counsel for the Underwriters.

(h) There shall not have come to the Representative's attention any facts that would cause the Representative to believe that the Disclosure Package, as of the Initial Sale Time, or the Prospectus, at the time it was required to be delivered to a purchaser of the Preferred HITS, included an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in light of the circumstances existing at the time of such delivery, not misleading.

(i) At the Closing Time, the Preferred HITS shall have been authorized for listing on the New York Stock Exchange upon notice of issuance or the Offerors shall have filed a preliminary listing application with respect thereto with the New York Stock Exchange and shall not have received any information stating that the Preferred HITS will not be authorized for listing, subject to official notice of issuance and evidence of satisfactory distribution.

(j) On or after the Initial Sale Time, the Preferred HITS shall have been accorded a rating of not less than "A" by Standard & Poor's Ratings Service, not less than "A1" by Moody's Investors Service, Inc. and not less than "A+" by Fitch Ratings, Inc.

(k) In connection with the sale and purchase of the Preferred HITS and the Related Securities, if any condition specified in this Section with respect thereto shall not have been fulfilled in all material respects when and as required to be fulfilled, this Agreement may be terminated by the Representative by notice to the Offerors, in writing or by telephone or telegraph confirmed in writing, at any time at or prior to the 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.

SECTION 6. INDEMNIFICATION AND CONTRIBUTION

(a) The Offerors jointly and severally agree to indemnify and hold harmless each Underwriter and each person, if any, who controls any Underwriter within the meaning of the Securities Act and the Exchange Act against any loss, claim, damage, liability or expense, as incurred, to which such Underwriter or such controlling person may become subject, insofar as such loss, claim, damage, liability or expense (or actions in respect thereof as contemplated below) arises out of or is based upon (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, or any amendment thereto, including any information deemed to be a part thereof pursuant to Rule 430B under the Securities Act, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading; or (ii) any untrue statement or alleged

untrue statement of a material fact contained in the Disclosure Package or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, and to reimburse each Underwriter and each such controlling person for any and all expenses (including the fees and disbursements of counsel chosen by Banc of America Securities LLC) as such expenses are reasonably incurred by such Underwriter or such controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action; provided, however, that the foregoing indemnity agreement shall not apply to any loss, claim, damage, liability or expense to the extent, but only to the extent, arising out of or based upon any untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with the Underwriter Information 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 the Debt Trustee, Guarantee Trustee or Delaware Trustee. The indemnity agreement set forth in this Section 6(a) shall be in addition to any liabilities that the Offerors may otherwise have.

(b) Each Underwriter agrees, severally and not jointly, to indemnify and hold harmless the Trust, the Trustees, the Company, each of the Company's directors, each of the Company's officers and each of the Trustees who signed the Registration Statement, and each person, if any, who controls the Company or the Trust within the meaning of the Securities Act or the Exchange Act, against any loss, claim, damage, liability or expense, as incurred, to which the Company or the Trust, or any such director, officer, Trustee or controlling person may become subject, insofar as such loss, claim, damage, liability or expense (or actions in respect thereof as contemplated below) arises out of or is based upon (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, or any amendment thereto, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading; or (ii) upon any untrue statement or alleged untrue statement of a material fact contained in the Base Prospectus, the preliminary prospectus or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, in each case to the extent, and only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Registration Statement, the Base Prospectus, the preliminary prospectus or the Prospectus (or any amendment or supplement thereto), in reliance upon and in conformity with the Underwriter Information; and to reimburse the Company, the Trust, or any such director, officer, Trustee or controlling person for any legal and other expense reasonably incurred by the Company, the Trust, or any such director, officer, Trustee or controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action. The Offerors hereby acknowledges that the only information that the Underwriters have furnished to the Offerors expressly for use in the Registration Statement, the Disclosure Package or the Prospectus (or any amendment or supplement thereto) are the names of the Underwriters, the sentences relating to reallowances and concessions and the fifth, sixth and seventh paragraphs under the caption "Underwriting" in the preliminary prospectus and the Prospectus. The indemnity agreement set forth in this Section 6(b) shall be in addition to any liabilities that each Underwriter may otherwise have.

(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 an indemnifying party under this Section 6, notify the indemnifying party in writing of the commencement thereof; but the failure to so notify the indemnifying party (i) will not relieve it from liability under paragraph (a) or (b) above unless and to the extent it did not otherwise learn of such action and such failure results in the forfeiture by the indemnifying party of substantial rights and defenses and (ii) will not, in any event, relieve the indemnifying party from any liability other than the indemnification obligation provided in paragraph (a) or (b) above. In case any such action is brought against any indemnified party and such indemnified party seeks or intends to seek indemnity from an indemnifying party, the indemnifying party will be entitled to participate in, and, to the extent that it shall elect, jointly with all other indemnifying parties similarly notified, 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 a conflict may arise between the positions of the indemnifying party and the indemnified party in conducting the defense of any such action or that there may be legal defenses available to it and/or other indemnified parties that 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 assume 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 such indemnifying party's 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 accordance with the proviso to the preceding sentence (it being understood, however, that the indemnifying party shall not be liable for the expenses of more than one separate counsel (other than local counsel approved by the Representatives)), representing the indemnified parties who are parties to such action or (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 action, in each of which cases the fees and expenses of counsel shall be at the expense of the indemnifying party.

(d) The indemnifying party under this Section 6 shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party against any loss, claim, damage, liability or expense by reason of such settlement or judgment. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement, compromise or consent to the entry of judgment in any pending or threatened action, suit or proceeding in respect of which any indemnified party is or could have been a party and indemnity was or could have been sought hereunder by such indemnified party, unless such settlement, compromise or consent (i) includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such action, suit or proceeding and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of any indemnified party.

(e) If the indemnification provided for in Sections 6(a) through (d) is for any reason unavailable to or otherwise insufficient to hold harmless an indemnified party in respect of any losses, claims, damages, liabilities or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount paid or payable by such indemnified party, as incurred, as a result of any losses, claims, damages, liabilities or expenses referred to therein (i) in such proportion as is appropriate to reflect the relative benefits received by the Offerors, on the one hand, and the Underwriters, on the other hand, from the offering of the Preferred HITS and the Related Securities pursuant to this Agreement or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Offerors, on the one hand, and the Underwriters, on the other hand, in connection with the statements or omissions which resulted in such losses, claims, damages, liabilities or expenses, as well as any other relevant equitable considerations. The relative benefits received by the Offerors, on the one hand, and the Underwriters, on the other hand, in connection with the offering of the Preferred HITS and the Related Securities pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of the Preferred HITS and the Related Securities pursuant to this Agreement (before deducting expenses) received by the Offerors, and the total underwriting commissions received by the Underwriters, in each case as set forth on the front cover page of the Prospectus, bear to the aggregate initial public offering price of the Preferred HITS as set forth on such cover. The relative fault of the Offerors, on the one hand, and the Underwriters, on the other hand, shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact or any such inaccurate or alleged inaccurate representation or warranty relates to information supplied by the Offerors, on the one hand, or the Underwriters, on the other hand, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The amount paid or payable by a party as a result of the losses, claims, damages, liabilities and expenses referred to above shall be deemed to include, subject to the limitations set forth in Section 6(c), any legal or other fees or expenses reasonably incurred by such party in connection with investigating or defending any action or claim. The provisions set forth in Section 6(c) with respect to notice of commencement of any action shall apply if a claim for contribution is to be made under this Section 6(e); provided, however, that no additional notice shall be required with respect to any action for which notice has been given in accordance with Section 6(c) for purposes of indemnification. The Offerors and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 6(e) were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 6(e).

Notwithstanding the provisions of this Section 6(e), no Underwriter shall be required to contribute any amount in excess of the underwriting discounts received by such Underwriter in connection with the Preferred HITS or Related Securities underwritten by it. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations to contribute pursuant to this Section 6(e) are several, and not joint, in proportion to their respective underwriting commitments as set forth opposite their

names in Schedule A. For purposes of this Section 6(e), each Underwriter and each person, if any, who controls an Underwriter within the meaning of the Securities Act and the Exchange Act shall have the same rights to contribution as such Underwriter, and each director of the Company, each officer of the Company and each Trustee of the Trust who signed the Registration Statement, and each person, if any, who controls the Company or the Trust within the meaning of the Securities Act and the Exchange Act shall have the same rights to contribution as the Company or the Trust. 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 (e), notify such party or parties from whom contribution may be sought, as contemplated by the preceding paragraph. However, 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 (e).

(f) The Company agrees to indemnify the Trust against all losses, claims, damages or liabilities incurred by 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 Representative, by notice given to the Offerors prior to delivery of and payment for the Preferred HITS, 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, or (ii) a banking moratorium or a material disruption in the commercial banking or securities settlement or clearance services in the United States shall have been declared by Federal or New York State authorities, or (iii) there shall have occurred any outbreak or material escalation of hostilities or other calamity or crisis (in the United States or elsewhere) the effect of which on the financial markets of the United States is such as to make it, in the judgment of the Representative, impracticable to market the Preferred HITS.

SECTION 8. DEFAULT BY ONE OR MORE OF THE UNDERWRITERS. If one or more of the Underwriters shall fail at the Closing Time to purchase all or part of the Preferred HITS that it or they are obligated to purchase under this Agreement (the "Defaulted Securities"), the Representative 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 Representative 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 Preferred HITS 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 Preferred HITS this Agreement shall terminate without liability on the part of any non-defaulting Underwriter, the Company or the Trust.

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 Representative or the Offerors shall have the right to postpone the Closing Time for a period not exceeding seven days in order to effect any required changes in the Disclosure Package, 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, NY1-301-29-01, 9 West 57th Street, New York, NY 10019, Attn.: Caspar Bentinck, Principal, with a copy to: Morrison & Foerster LLP, 1290 Avenue of the Americas, New York, New York 10104-0050, Attn.: James R. Tanenbaum; notices to the Trust and the Company shall be directed to them at Bank of America Corporation, Corporate Treasury Securities Administration, Bank of America Corporate Center, NC1-007-07-06, 100 North Tryon Street, Charlotte, N.C. 28255, with a copy to each of: Bank of America Corporation, Legal Department, NC1-002-29-01, 101 South Tryon Street, Charlotte, North Carolina 28255 Attn.: General Counsel; and Helms Mulliss & Wicker, PLLC, 201 North Tryon Street, Charlotte, North Carolina 28202, Attn.: Boyd C. Campbell, Jr.

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

SECTION 11. NO FIDUCIARY DUTIES; AGREEMENT COMPLETE

(a) Each of the Company and the Trust acknowledges and agrees that: (i) the purchase and sale of the Preferred HITS pursuant to this Agreement, including the determination of the public offering price of the Preferred HITS and any related discounts and commissions, is an arm's-length commercial transaction between the Company and the Trust, on the one hand, and the several Underwriters, on the other hand, and each of the Company and the Trust is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated by this Agreement; (ii) in connection with each transaction contemplated hereby and the process leading to such transaction each Underwriter is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary of the Company, or its affiliates, stockholders, creditors or employees or any other party, including the

Trust; (iii) no Underwriter has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Company or the Trust with respect to any of the transactions contemplated hereby or the process leading thereto (irrespective of whether such Underwriter has advised or is currently advising the Company or the Trust on other matters) and no Underwriter has any obligation to the Company or the Trust with respect to the offering contemplated hereby except the obligations expressly set forth in this Agreement; (iv) the several Underwriters and their respective affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company or the Trust and that the several Underwriters have no obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Underwriters have not provided any legal, accounting, regulatory or tax advice with respect to the offering contemplated hereby and each of the Company and the Trust has consulted its own legal, accounting, regulatory and tax advisors to the extent it deemed appropriate.

(b) This Agreement supersedes all prior agreements and understandings (whether written or oral) between the Company, the Trust and the several Underwriters, or any of them, with respect to the subject matter hereof. Each of the Company and the Trust hereby waives and releases, to the fullest extent permitted by law, any claims that the Company or the Trust may have against the several Underwriters with respect to any breach or alleged breach of agency or fiduciary duty.

SECTION 12. 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 13. 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.

If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Company and the Trust 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: /s/ Ann J. Travis
Name: Ann J. Travis
Title: Senior Vice President

BAC CAPITAL TRUST XIII

By: /s/ James T. Houghton
Name: James T. Houghton
Title: Regular Trustee

By: /s/ Ann J. Travis
Name: Ann J. Travis
Title : Regular Trustee

By: /s/ Richard L. Nichols, Jr.
Name: Richard L. Nichols, Jr.
Title: Regular Trustee

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

BANC OF AMERICA SECURITIES LLC

For itself and as the Representative
of the several Underwriters named in
Schedule A hereto.

By: BANC OF AMERICA SECURITIES LLC

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

SCHEDULE A

NAME OF UNDERWRITERS	NUMBER OF Preferred HITS
Banc of America Securities LLC	679,000
Bear, Stearns & Co. Inc.	7,000
UBS Securities LLC	7,000
Muriel Siebert & Co.	3,500
The Williams Capital Group, L.P.	3,500
Total	700,000

SCHEDULE B

Underwriting Agreement dated February 12, 2007

Registration Statement No. 333-133852

Underwriters: Banc of America Securities LLC
Bear, Stearns & Co. Inc.
UBS Securities LLC
Muriel Siebert & Co.
The Williams Capital Group, L.P.

Address of Underwriters:

c/o Banc of America Securities LLC
NY1-301-29-01
9 West 57th Street
New York, NY 10019
Attention: Caspar Bentinck

Title, Purchase Price and Description of Securities:

Title: BAC Capital Trust XIII Floating Rate Preferred Hybrid Income Term Securities (the "Preferred HITS")

1. The initial public offering price per security for the Preferred HITS, determined as provided in said Section 2, shall be $1,000.

2. The purchase price per security for the Preferred HITS to be paid by the several Underwriters shall be $1,000, being an amount equal to the initial public offering price set forth above.

3. The compensation per Preferred HITS to be paid by the Company to the several Underwriters in respect of their commitments hereunder shall be $10.

Closing Date, Time and Location: February 16, 2007, 9:00 A.M. New York City time, Offices of Morrison & Foerster LLP.

Stock Exchange Listing: Application will be made to list the Preferred HITS on the New York Stock Exchange.

SCHEDULE C
ISSUER FREE WRITING PROSPECTUSES

Final Term Sheet (as set forth in Schedule D)

SCHEDULE D

BAC CAPITAL TRUST XIII

Floating Rate Preferred Hybrid Income Term Securities

FINAL TERM SHEET

Dated February 12, 2007

Exhibit 1.3

850,000 Preferred HITS

BAC CAPITAL TRUST XIV
(a Delaware Trust)

5.63% Fixed to Floating Rate Preferred Hybrid Income Term Securities
(Liquidation Amount of $1,000 per Security)

UNDERWRITING AGREEMENT

February 12, 2007

Banc of America Securities LLC
as the Representative of the several Underwriters
c/o Banc of America Securities LLC
9 West 57th Street
New York, NY 10019

Ladies and Gentlemen:

BAC Capital Trust XIV (the "Trust"), a statutory trust organized under the Statutory Trust Act of the State of Delaware (the "Delaware Act"), 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 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 8 hereof), for whom Banc of America Securities LLC is acting as the Representative (in such capacity, the "Representative"), with respect to the sale by the Trust and the purchase by the Underwriters, acting severally and not jointly, of the respective numbers of 5.63% Fixed to Floating Rate Preferred Hybrid Income Term Securities (liquidation amount of $1,000 per security) of the Trust (the "Preferred HITS") set forth in Schedule A attached hereto. The Trust is authorized to issue three classes of Hybrid Income Term Securities (the "HITS"): the Preferred HITS, the Treasury HITS and the Corporate HITS. The HITS will be guaranteed on a junior 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 "HITS Guarantee") pursuant to the Guarantee Agreement, to be dated as of February 16, 2007 (the "Guarantee Agreement"), by and between the Company and The Bank of New York, as trustee (the "Guarantee Trustee"), and will be entitled to the benefits of certain back-up undertakings described in the Prospectus with respect to the Company's agreement pursuant to the Fourteenth Supplemental Indenture (as defined herein) to pay all reasonable expenses relating to administration of the Trust (other than payment obligations with respect to the HITS). The Company will enter into a Replacement Capital Covenant to be dated as of the Closing Date in favor of and for the benefit of each Covered Debtholder (as defined therein) which may be amended or supplemented from time to time in accordance with the provisions thereof (the "Replacement Capital Covenant").

The Offerors understand that the Underwriters propose to make an offering of the Preferred HITS as soon as the Representative deems advisable after this Agreement has been executed and delivered and the Declaration (as defined herein), the Indenture (as defined herein) and the HITS Guarantee Agreement have been qualified under the Trust Indenture Act of 1939, as amended, and the rules and regulations promulgated thereunder (the "Trust Indenture Act"). The entire proceeds to the Trust from the sale of the Preferred HITS will be combined with the entire proceeds from the sale by the Trust to the Company of its common securities (the "Common Securities") and will be used by the Trust to purchase $850,100,000 in aggregate principal amount of the Remarketable Fixed Rate Junior Subordinated Notes due 2043 (the "Junior Subordinated Notes") issued by the Company pursuant to the Indenture (as defined herein). The Common Securities will be guaranteed on a junior subordinated basis by the Company, to the extent set forth in the Prospectus, with respect to distributions and payments upon liquidation, redemption, and otherwise (the "Common Securities Guarantee" and, together with the HITS Guarantee, the "Guarantees") pursuant to the Common Securities Guarantee Agreement, to be dated as of February 16, 2007 (the "Common Securities Guarantee Agreement" and, together with the HITS Guarantee Agreement, the "Guarantee Agreements").

The Preferred HITS and the Common Securities will be issued pursuant to the Amended and Restated Declaration of Trust of the Trust, dated as of February 16, 2007 (the "Declaration") among the Company, as Sponsor, James T. Houghton, Ann J. Travis, and Richard L. Nichols, Jr., as trustees (the "Regular Trustees"), The Bank of New York (Delaware), a Delaware banking corporation, as Delaware trustee (the "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"), by and between the Company and The Bank of New York Trust Company, N.A. as successor trustee to The Bank of New York, as trustee (the "Debt Trustee"), as supplemented by a fourteenth supplement to the Base Indenture, to be dated as of February 16, 2007 (the "Fourteenth Supplemental Indenture," and together with the Base Indenture, the "Indenture"), by and between the Company and the Debt Trustee. The Trust will contemporaneously enter into (i) a Stock Purchase Contract Agreement (the "Stock Purchase Contract Agreement") with the Company, pursuant to which the Trust will agree to purchase 8,501 Stock Purchase Contracts (each a "Stock Purchase Contract"), each having a stated amount of $100,000 and obligating the Trust to purchase from the Company, and the Company to sell to the Trust, subject to the terms thereof, one share of the Company's Adjustable Rate Non-Cumulative Perpetual Preferred Stock, Series G, $100,000 liquidation preference per share (the "Preferred Stock"), on the Stock Purchase Date provided for in (and as defined in) the Stock Purchase Contract Agreement, and (ii) a Collateral Agreement (the "Collateral Agreement") with The Bank of New York Trust Company, N.A., as collateral agent (the "Collateral Agent'), under which the Trust will initially pledge the Junior Subordinated Notes to secure its obligation to purchase the Preferred Stock under the Stock Purchase Contracts. The Treasury HITS, the Corporate HITS, the Junior Subordinated Notes, the Guarantees, the Stock Purchase Contracts and the Preferred Stock are collectively referred to herein as the "Related Securities".

Capitalized terms used herein and not otherwise defined but that are defined in the Prospectus shall have the meanings specified in the Prospectus.

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) The Offerors propose to file with the Securities and Exchange Commission (the "Commission") pursuant to Rule 424(b) under the Securities Act of 1933, as amended and the rules and regulations promulgated thereunder (collectively, the "Securities Act"), a supplement to the form of prospectus included in the registration statement (referred to below) relating to the Preferred HITS and the Related Securities and the plan of distribution thereof and have previously advised you of all further information (financial and other) with respect to the Offerors to be set forth therein. Such registration statement (File No. 333-133852), including the financial statements, exhibits and schedules thereto and including any required information deemed to be a part thereof pursuant to Rule 430B under the Securities Act or the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (collectively, the "Exchange Act"), at each time of effectivness, is called the "Registration Statement." Any preliminary prospectus supplement to the base prospectus included in the Registration Statement (the "Base Prospectus") that describes the Preferred HITS and the Related Securities and the offering thereof and is used prior to filing of the Prospectus is called, together with the Base Prospectus, a "preliminary prospectus." The term "Prospectus" shall mean the final prospectus supplement relating to the Preferred HITS and the Related Securities, together with the Base Prospectus, that is first filed pursuant to Rule 424(b) after the date and time that this Agreement is executed and delivered by the parties hereto (the "Execution Time"). Any reference herein to the Registration Statement, any preliminary prospectus or the Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the Securities Act; any reference to any amendment or supplement to any preliminary prospectus or the Prospectus shall be deemed to refer to and include any documents filed after the date of such preliminary prospectus or Prospectus, as the case may be, under the Exchange Act, and incorporated by reference in such preliminary prospectus or Prospectus, as the case may be; and any reference to any amendment to the Registration Statement shall be deemed to refer to and include any annual report of the Company filed pursuant to Section 13(a) or 15(d) of the Exchange Act after the effective date of the Registration Statement that is incorporated by reference in the Registration Statement. All references in this Agreement to the Registration Statement, a preliminary prospectus, the Prospectus, or any amendments or supplements to any of the foregoing, shall include any copy thereof filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval System ("EDGAR") (except as may be permitted by Regulation S-T under the Securities Act).

(ii) The term "Disclosure Package" shall mean (i) the preliminary prospectus, as it may be amended or supplemented, (ii) the issuer free writing prospectuses as defined in Rule 433 under the Securities Act (each, an "Issuer Free Writing Prospectus"), if any, identified in Schedule C hereto and (iii) any other free writing prospectus that the parties hereto shall hereafter expressly agree in writing to treat as part of the Disclosure Package. As of 8:00 P.M. (Eastern time) on the date of this Agreement (the "Initial Sale Time"), the Disclosure Package did not contain any untrue statement of a material fact or omit to

state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements contained in or omissions from the preliminary prospectus based upon and in conformity with written information furnished to the Offerors by or on behalf of any Underwriter through the Representative specifically for use therein, it being understood and agreed that the only such information furnished by or on behalf of any Underwriter consists of the information described as such in Section 6(b) hereof (the "Underwriter Information").

(iii) As of the date hereof, when the Prospectus is first filed with the Commission pursuant to Rule 424(b) under the Securities Act, when any supplement or amendment to the Prospectus is filed with the Commission, at the Closing Time, and, with respect to the Registration Statement in (A) and (B) below, as of the Initial Sale Time, (A) the Registration Statement, as amended as of any such time, and the Prospectus, as amended or supplemented as of any such time, and the Indenture complied, complies or will comply in all material respects with the applicable provisions of the Securities Act, the Exchange Act and the Trust Indenture Act, (B) the Registration Statement, as amended as of any such time, did not, does not and will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading, and (C) the Prospectus, as amended or supplemented as of any such time, will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading; provided, however, that the Offerors make no representations or warranties as to (I) that part of the Registration Statement which shall constitute the Statements of Eligibility and Qualification of the Trustee (Form T-1) under the Trust Indenture Act of the Debt Trustee, the Property Trustee or the Guarantee Trustee or (II) the Underwriter Information. The documents which are incorporated or deemed incorporated by reference in the Disclosure Package, the Registration Statement, the preliminary prospectus or the Prospectus, when they were filed with the Commission, complied in all material respects with the requirements of the Securities Act or the Exchange Act, as applicable, and did not, when such documents were so filed, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The Commission has not issued any stop order suspending the effectiveness of the Registration Statement or any order preventing or suspending the use of the preliminary prospectus or the Prospectus and the Offerors are without knowledge that any proceedings have been instituted for either purpose.

(iv) Since the respective dates as of which information is given in the Registration Statement, the Disclosure Package and the Prospectus, except as otherwise stated therein, there has been no material adverse change in the condition (financial or other), earnings, business or properties 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.

(v) 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, is an independent registered public accounting firm as required by the Securities Act.

(vi) The Trust has been duly created and is validly existing and in good standing as a statutory trust under the Delaware Act with the power and authority to own property and to conduct its business as described in the Registration Statement, the Disclosure Package and the Prospectus and to enter into and perform its obligations under this Agreement, the HITS, the Common Securities, the Declaration and the other transaction documents to which the Trust is a party (such documents consist of the Stock Purchase Contract Agreement and the Collateral Agreement and, collectively, are referred to as the "Other Trust Transaction Agreements"); the Trust is not a party to or otherwise bound by any agreement other than those described in the Disclosure Package and the Prospectus; the Trust is and will be classified for U.S. federal income tax purposes as a grantor trust and not as an association taxable as a corporation; and the Trust is not and will not be treated as a consolidated subsidiary of the Company pursuant to generally accepted accounting principles.

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

(viii) 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 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 in all material respects to the descriptions thereof contained in the Disclosure Package and the Prospectus; and the Declaration has been duly qualified under the Trust Indenture Act.

(ix) Each of the Guarantee Agreements has been duly authorized by the Company and, when validly executed and delivered by the Company, assuming due authorization, execution and delivery of the HITS Guarantee by the Trustee thereof, 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 in all material respects to the descriptions thereof contained in the Disclosure Package and the Prospectus; and the HITS Guarantee Agreement has been duly qualified under the Trust Indenture Act.

(x) 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, the Disclosure Package and the 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, will be entitled to the benefits of the Declaration and will conform in all material respects to the descriptions thereof contained in the Disclosure Package and the Prospectus; and the issuance of the Common Securities is not subject to preemptive or other similar rights.

(xi) The Preferred HITS have been duly authorized by the Trust pursuant to the Declaration and, when issued and delivered pursuant to this Agreement and the Declaration 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 assets of the Trust, will be entitled to the benefits of the Declaration and will conform in all material respects to the descriptions thereof contained in the Disclosure Package and the Prospectus; the issuance of the Preferred HITS is not subject to preemptive or other similar rights; and, subject to the terms of the Declaration, holders of Preferred HITS will be entitled to the same limitation of personal liability under Delaware law as extended to stockholders of private corporations for profit.

(xii) The Treasury HITS and Corporate HITS have been duly authorized by the Trust pursuant to the Declaration and, if issued and delivered pursuant to the Declaration and this Agreement against payment therefor as described in the 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, will be entitled to the benefits of the Declaration and will conform in all material respects to the descriptions thereof contained in the Disclosure Package and the Prospectus; the issuance of the Treasury HITS and the Corporate HITS will not be subject to preemptive or other similar rights; and, subject to the terms of the Declaration, holders of Treasury HITS and Corporate HITS will be entitled to the same limitation of personal liability under Delaware law as extended to stockholders of private corporations for profit.

(xiii) 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.

(xiv) None of the Offerors is, and upon the issuance and sale of the Preferred HITS as herein contemplated and the application of the net proceeds therefrom as described in the Disclosure Package and 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 and the rules and regulations promulgated thereunder (collectively, the “1940 Act”).

(xv) The provisions of the Collateral Agreement are effective to create in favor of the Collateral Agent for the benefit of the Company a valid security interest under the Uniform Commercial Code as in effect in the State of New York (the “UCC”) in all “security entitlements” (as defined in Section 8-102(a)(17) of the UCC and the Federal

Book-Entry Regulations) now or hereafter carried in or to the Junior Subordinated Notes or treasury securities included in the Pledge Account (the "Pledged Securities Entitlements"); and upon possession by the Collateral Agent of the Pledged Securities Entitlements or upon the filing of a UCC Financing Statement in the proper filing office, as applicable, the Collateral Agent will have a perfected security interest, for the benefit of the Company, in the Pledged Security Entitlements. "Federal Book-Entry Regulations" means (a) the federal regulations contained in Subpart B ("Treasury/Reserve Automated Debt Entry System (TRADES)" governing Book-Entry Securities (as defined therein) consisting of U.S. Treasury bonds, notes and bills) and Section 357.41 through Section 357.44 (including related defined terms in 31 C.F.R. Section 357.2); and (b) to the extent substantially identical to the federal regulations referred to in clause (a) above (as in effect from time to time), the federal regulations governing other Book-Entry Securities.

(xvi) No authorization, approval, consent or order of any court or governmental authority or agency is necessary in connection with the execution, delivery or performance by the Trust of the Trust Transaction Agreements, or the offering, issuance and sale of the Preferred HITS, the HITS Guarantee and the Junior Subordinated Notes, the issuance of the Common Securities and the Common Securities Guarantee, the exchange of the Preferred HITS and the related issuances of the Treasury HITS and Corporate HITS in accordance with the terms of the Declaration, the purchase by the Trust of shares of Preferred Stock pursuant to the Stock Purchase Contract Agreement or the execution, delivery or performance by the Trust of any of the Other Trust Transaction Agreements, except such as may be required under the Securities Act or state securities or insurance laws, and the qualification of the Declaration, the HITS Guarantee Agreement and the Indenture under the Trust Indenture Act; provided however that the Offerors do not make any representation regarding any approval that may be required by the Federal Reserve regarding the treatment of the HITS for regulatory capital purposes, the issuance of securities and application of proceeds pursuant to the alternative payment mechanism or the Replacement Capital Covenant described in the Prospectus or any repurchase or redemption of the HITS or the Related Securities.

(xvii)(A) At the earliest time after the Offerors or another offering participant made a *bona fide* offer (within the meaning of Rule 164(h)(2) under the Securities Act) and (B) as of the date of the execution and delivery of this Agreement (with such date being used as the determination date for purposes of this clause (B)), neither Offeror was or is an Ineligible Issuer (as defined in Rule 405 under the Securities Act).

(xviii) No Issuer Free Writing Prospectus (including any Final Term Sheet), as of its issue date and at all subsequent times through the completion of the offering contemplated hereby or until any earlier date that the Company notified or notifies the Representative as described in the next sentence, included, includes or will include any information that conflicted, conflicts, or will conflict with the information contained in the Registration Statement, including any document incorporated by reference therein, the preliminary prospectus or the Prospectus, that had not or has not been superseded or modified. If at any time following issuance of an Issuer Free Writing Prospectus and prior to the end of the Prospectus Delivery Period (as defined herein), there occurred or

occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted or would conflict with the information contained in the Registration Statement or the Prospectus, the Company has promptly notified or will promptly notify the Representative and has promptly amended or supplemented or will promptly amend or supplement, at its own expense, such Issuer Free Writing Prospectus to eliminate or correct such conflict. The foregoing two sentences do not apply to statements in or omissions from an Issuer Free Writing Prospectus based upon and in conformity with Underwriter Information.

(xix) The Offerors have not distributed and will not distribute, prior to the later of the Closing Date and the completion of the Underwriters' distribution of the Preferred HITS, any offering material in connection with the offering and sale of the Preferred HITS and the Related Securities other than the Registration Statement, the preliminary prospectus, the Prospectus, and any Issuer Free Writing Prospectus reviewed and consented to by the Representative and included in Schedule C hereto.

(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 Securities 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 Securities Act and complies in all material respects with said rule.

(ii)(A) At the time of filing the Registration Statement, (B) at the time of the most recent amendment thereto for the purposes of complying with Section 10(a)(3) of the Securities Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Section 13 or 15(d) of the Exchange Act or form of prospectus), (C) at the time the Company, the Trust or any person acting on their respective behalf (within the meaning, for this clause only, of Rule 163(c) of the Securities Act) made any offer relating to the Preferred HITS and the Related Securities in reliance on the exemption under Rule 163 of the Securities Act, and (D) at the Execution Time (with such time being used as the determination time for purposes of this clause (D)), the Company was and is a "well-known seasoned issuer" as defined in Rule 405 under the Securities Act. The Registration Statement is an "automatic shelf registration statement," as defined in Rule 405 under the Securities Act, neither the Company nor the Trust has received from the Commission any notice pursuant to Rule 401(g)(2) under the Securities Act objecting to use of the automatic shelf registration statement form and the Company has not otherwise ceased to be eligible to use the automatic shelf registration statement form.

(iii) The Company has complied and will comply with all the provisions of Florida H.B. 1771, codified asSection 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 suchSection 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.

(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 (A) to own, lease and operate its properties and to conduct its business as described in the Disclosure Package and the Prospectus, (B) to enter into and perform its obligations under this Agreement, the Declaration, as Sponsor, the Indenture, each of the Guarantee Agreements, the Remarketing Agreement (as defined herein) and each of the Other Company Transaction Agreements (as defined herein), (C) to purchase, own and hold the Common Securities issued by the Trust and (D) to issue and deliver on the Stock Purchase Date certificates representing the Preferred Stock to be then issued; 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. (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 in all material respects to the descriptions thereof contained in the Disclosure Package and the Prospectus; and the Indenture has been duly qualified under the Trust Indenture 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 Disclosure Package and the 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 in all material respects to the descriptions thereof contained in the Disclosure Package and the Prospectus.

(viii) The shares of Preferred Stock to be issued by the Company to the Trust under the Stock Purchase Contracts on the Stock Purchase Date have been duly authorized by the Company and the Company has reserved for issuance out of its authorized capital stock the maximum number of shares of Preferred Stock issuable under the Stock Purchase Contracts; the Preferred Stock, when issued and delivered against payment therefor as provided in the Stock Purchase Contract Agreement and as provided in the Company's Certificate of Designations relating to the Preferred Stock (the "Certificate of Designations") will be duly and validly issued and fully paid and non-assessable and will conform in all material respects to the descriptions thereof contained in the Disclosure Package and the Prospectus.

(ix) Each of the Guarantee Agreements, the Stock Purchase Contract Agreement, the Collateral Agreement, the Replacement Capital Covenant, and that certain Note Purchase Agreement entered into between the Company and the Trust on the date hereof (the "Note Purchase Agreement") (collectively, the "Other Company Transaction Agreements" and, together with this Agreement, the Declaration, the Indenture and the Junior Subordinated Notes, the "Company Transaction Agreements") 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 Other Company Transaction Agreements will conform in all materials respects to the descriptions thereof contained in the Disclosure Package and the Prospectus.

(x) 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.

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

(xii) 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.

(xiii) No authorization, approval, consent or order of any court or governmental authority or agency is necessary in connection with the execution, delivery or performance by the Company of any of the Company Transaction Agreements or the Remarketing Agreement or the issuance of the Preferred Stock in accordance with the Stock Purchase Contract Agreement, except such as may be required under the Securities Act or state securities or insurance laws and the qualification of the HITS Guarantee Agreement under the Trust Indenture Act; provided however that the Company does not make any representation regarding any approval that may be required by the Federal Reserve regarding the treatment of the HITS for regulatory capital purposes, the issuance of securities and application of proceeds pursuant to the alternative payment mechanism and the Replacement Capital Covenant described in the Prospectus or any repurchase or redemption of the HITS or the Related Securities.

(xiv) The Remarketing Agreement to be entered into between the Company and the agent named therein (the "Remarketing Agreement") 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 Remarketing Agreement will conform in all material respects to the descriptions thereof contained in the Disclosure Package and the Prospectus.

(xv) The execution, delivery and performance of the Company Transaction Agreements and the consummation of the transactions contemplated therein and compliance by the Company with its obligations thereunder 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 either 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 violation of the provisions of the amended and restated certificate 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 Underwriters 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 follows:

(i) Since the respective dates as of which information is given in the Registration Statement, the Disclosure Package and the Prospectus, except as otherwise stated therein, (A) there has been no material adverse change in the condition (financial or other), earnings, business or properties of the Trust, whether or not arising from transactions 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 to the Trust.

(ii) Except as disclosed in the Disclosure Package and 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 Disclosure

Package and 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 other), earnings, business or properties of the Trust, whether or not arising from transactions 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 Securities Act that either have not been so filed or will not have been filed after the date hereof within the time periods prescribed by the Securities Act.

(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, individually or in the aggregate, if the subject of an unfavorable decision, ruling or finding would materially and adversely affect the condition (financial or other), earnings, business or properties of the Trust.

(iv) Each of the Other Trust Transaction Agreements (collectively with this Agreement, the "Trust Transaction Agreements") has been duly authorized, executed and delivered by the Trust and will constitute a valid and legally binding instrument of the Trust, enforceable against the Trust in accordance with its terms, except to the extent that enforcement thereof may be limited by the Permitted Exceptions, and each of the Other Trust Transaction Agreements will conform in all material respects to the descriptions thereof in the Disclosure Package and the Prospectus.

(v) The execution, delivery and performance of this Agreement, the Other Trust Transaction Agreements and the Declaration, the issuance and sale of the Preferred HITS 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 on the part of the Trust and do not and will not result in any violation of the Declaration or the Certificate of Trust for the Trust dated as of May 3, 2006 (the "Certificate of Trust") and do not and will not conflict with, or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Trust under (A) any contract, indenture, mortgage, loan agreement, note, lease or other agreement or instrument to which the Trust is a party or by which it may be bound or to which any of its properties may be subject or (B) any existing applicable law, rule, regulation, judgment, order or decree of any government, governmental instrumentality or court, domestic or foreign, or any regulatory body or administrative agency or other governmental body having jurisdiction over the Trust or any of its properties.

(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.

(f) Each Underwriter, severally and not jointly, represents and agrees that:

(1) it will comply with all applicable rules of the National Association of Securities Dealers, Inc. (the "NASD"); and

(2) it has not and will not, directly or indirectly, offer, sell or deliver any of the Preferred HITS or distribute the preliminary prospectus, the Prospectus or any other offering materials relating to the Preferred HITS (including any free writing prospectuses) in or from any jurisdiction except under circumstances that will, to the best of its knowledge and belief, result in compliance with any applicable laws and regulations thereof.

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 and not jointly, and each Underwriter, severally and not jointly, agrees to purchase from the Trust, at the price per security set forth in Schedule B, the number of Preferred HITS set forth in Schedule A opposite the name of such Underwriter (except as otherwise provided in Schedule B), plus any additional number of Preferred HITS that such Underwriter may become obligated to purchase pursuant to the provisions of Section 8 hereof.

The purchase price per security to be paid by the several Underwriters for the Preferred HITS shall be an amount equal to the initial public offering price. The initial public offering price per Preferred HITS and the purchase price per Preferred HITS 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 Preferred HITS will be used to purchase the Junior Subordinated Notes of the Company, the Company hereby agrees to pay at the Closing Time to the Underwriters, a commission per Preferred HITS determined by agreement between the Representative and the Company for the Preferred HITS to be delivered by the Trust hereunder at the Closing Time. The commission is set forth in Schedule B.

(b) Payment of the purchase price for, and delivery of certificates for, the Preferred HITS shall be made at the offices of Morrison & Foerster LLP, or at such other place as shall be agreed upon by the Representative, the Company and the Trust, at 9:00 A.M. New York time on the fourth (4^{th}) 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 Representative, the Trust and the Company (such time and date of payment and delivery being herein called the "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 Representative for the respective accounts of the Underwriters of certificates for the Preferred HITS to be purchased by them. Unless otherwise agreed, certificates for the Preferred HITS 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.

(c) 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 Representative in same day funds.

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

(a) During the period beginning on the Initial Sale Time and ending on the later of the Closing Date or such date, as in the opinion of counsel for the Underwriters, the Prospectus is no longer required by law to be delivered in connection with sales by an Underwriter or dealer (except for delivery requirements imposed because such Underwriter or dealer is an affiliate of the Company or the Trust), including in circumstances where such requirement may be satisfied pursuant to Rule 172 (the "Prospectus Delivery Period"), the Offerors will notify the Representative 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 Disclosure Package, the Prospectus or any document filed pursuant to the Exchange Act which will be incorporated by reference in the preliminary prospectus or the Prospectus, or any amendment or supplement thereto, (iii) of the receipt of any comments from the Commission with respect to the Registration Statement, the Disclosure Package or the Prospectus (other than with respect to a document filed with the Commission pursuant to the Exchange Act which will be incorporated by reference in the Registration Statement, the preliminary prospectus and the Prospectus), (iv) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Disclosure Package or 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 Exchange Act which will be incorporated by reference in the Registration Statement, the preliminary prospectus and the 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 Preferred HITS, the Offerors (1) will give the Representative notice of their intention to file or prepare (i) any amendment to the Registration Statement (including any post-effective amendment) (other than with respect to a document filed with the Commission pursuant to the Exchange Act which will be incorporated by reference in the Registration Statement, the preliminary prospectus and Prospectus that is not filed to correct a misstatement, an omission or non-compliance that is the subject of a notice delivered to the Underwriters pursuant to paragraph (e) below (a "Periodic Filing")), or (ii) any amendment or supplement to the Disclosure Package or the Prospectus (including any revised prospectus which the Offerors propose for use by the Underwriters in connection with the offering of the Preferred HITS 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) under the Securities Act) (other than with respect to a Periodic Filing), will furnish the Representative 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 Representative with copies of any document that will be incorporated by reference in the preliminary prospectus or the Prospectus whether pursuant to the Securities Act, the Exchange Act or otherwise. Subject to the foregoing, the Offerors will file the preliminary prospectus and the Prospectus pursuant to Rule 424(b) under the Securities Act within the time required by such rule.

(c) The Offerors will deliver to the Representative as many conformed copies of the Registration Statement as originally filed and of each amendment thereto (including exhibits filed therewith or incorporated by reference therein and documents incorporated or deemed to be incorporated by reference therein) as the Representative may reasonably request.

(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 Securities Act, such number of copies of the Prospectus (as amended or supplemented) as such Underwriter may reasonably request for the purposes contemplated by the Securities Act.

(e) If at any time when the Prospectus is required by the Securities Act to be delivered in connection with sales of the Preferred HITS, 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 Disclosure Package or 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 misleading, or if it shall be necessary to amend or supplement the Disclosure Package or the Prospectus in order to comply with the requirements of the Securities Act, 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 (including, if consented to by the Representative, by means of an Issuer Free Writing Prospectus), give immediate notice, and confirm in writing, to the Underwriters to cease the solicitation of offers to purchase the Preferred HITS, 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 Preferred HITS and the Related Securities 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 neither 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 Securities Act) of the Registration Statement, which will satisfy the provisions of Section 11(a) of the Securities Act.

(h) The Offerors will use reasonable efforts to effect the listing of the Preferred HITS on the New York Stock Exchange.

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

(j) Until the business day following the Closing Date, neither the Company nor the Trust will, without the consent of the Representative, offer or sell, or announce the offering of, any additional securities covered by the Registration Statement or by any other registration statement filed under the Act; provided, however, the Company may, at any time, offer or sell or announce the offering of any securities (A) covered by a registration statement on Form S-8 or (B) covered by a registration statement on Form S-3 and (i) pursuant to which the Company issues securities under one of the Company's medium-term note programs (including, without limitation, the Company's Series K Medium-Term Notes program and the Company's InterNotes program), (ii) pursuant to which the Company issues securities for its dividend reinvestment plan, (iii) pursuant to which affiliates of the Company offer securities of the Company in secondary market transactions, (iv) Floating Rate Preferred Hybrid Income Trust Securities to be issued by BAC Capital Trust XIV pursuant to the Registration Statement in an underwritten offering in which the lead manager is Banc of America Securities LLC or (v) $2,000,000,000 Floating Rate Callable Senior Notes, due February 2010, to be issued by the Company pursuant to the Registration Statement in an underwritten offering in which the lead manager is Banc of America Securities LLC.

(k) The Offerors will prepare a final term sheet containing only a description of the Preferred HITS and the Related Securities, in a form approved by the Representative and contained in Schedule D of this Agreement, and will file such term sheet pursuant to Rule 433(d) under the Securities Act as promptly as possible, but in any case not later than the time required by such rule (such term sheet, the "Final Term Sheet"). Any such Final Term Sheet is an Issuer Free Writing Prospectus for purposes of this Agreement.

(l) The Offerors represent that each has not made, and agree that, unless they obtain the prior written consent of the Representative, they will not make, any offer relating to the Preferred HITS or the Related Securities that would constitute an Issuer Free Writing Prospectus or that would otherwise constitute a "free writing prospectus" (as defined in Rule 405 of the Securities Act) required to be filed by an Offeror with the Commission or retained by an Offeror under Rule 433 under the Securities Act; provided that the prior written consent of the Representative shall be deemed to have been given in respect of the Issuer Free Writing Prospectuses included in Schedule C hereto. Any such free writing prospectus consented to by the Representative is hereinafter referred to as a "Permitted Free Writing Prospectus." The Offerors agree that (i) they have treated and will treat, as the case may be, each Permitted Free Writing Prospectus as an Issuer Free Writing Prospectus, and (ii) they have complied and will comply, as the case may be, with the requirements of Rules 164 and 433 under the Securities Act applicable to any Permitted Free Writing Prospectus, including in respect of timely filing with the Commission, legending and record keeping. The Offerors consent to the use by any Underwriter of a free writing prospectus that (a) is not an "issuer free writing prospectus" as defined in Rule 433, and (b) contains only (i) information describing the preliminary terms of the Preferred HITS or their offering, (ii) information that describes the final terms of the Preferred HITS or their offering and that is included in the Final Term Sheet of the Offerors contemplated in paragraph (k) above or (iii) information permitted by Rule 134 of the Securities Act.

(m) If immediately prior to the third anniversary (the "Renewal Deadline") of the initial effective date of the Registration Statement, any of the Preferred HITS remain unsold by the Underwriters or any of the Treasury HITS or Corporate HITS are outstanding, the Company and the Trust will prior to the Renewal Deadline file, if they have not already done so and the Company is eligible to do so, a new automatic shelf registration statement relating to the HITS, in a form satisfactory to the Representatives. If the Company is no longer eligible to file an automatic shelf registration statement, the Company and the Trust will prior to the Renewal Deadline, if it has not already done so, file a new shelf registration statement relating to the HITS, in a form satisfactory to the Representatives, and will use their best efforts to cause such registration statement to be declared effective within 60 days after the Renewal Deadline. The Company and the Trust will take all other action necessary or appropriate to permit the public offering and sale of the Preferred HITS to continue as contemplated in the expired registration statement relating to the HITS. References herein to the Registration Statement shall include such new automatic shelf registration statement or such new shelf registration statement, as the case may be.

(n) If at any time when Preferred HITS remain unsold by the Underwriters or any of the Treasury HITS or Corporate HITS are outstanding, the Company or the Trust receives from the Commission a notice pursuant to Rule 401(g)(2) under the Securities Act or the Company otherwise ceases to be eligible to use the automatic shelf registration statement form, the Company will (i) promptly notify the Representatives, (ii) promptly file a new registration statement or post-effective amendment on the proper form relating to the HITS, in a form satisfactory to the Representatives, (iii) use its best efforts to cause such registration statement or post-effective amendment to be declared effective and (iv) promptly notify the Representatives of such effectiveness. The Company and the Trust will take all other action necessary or appropriate to permit the public offering and sale of the Preferred HITS to continue as contemplated in the registration statement that was the subject of the Rule 401(g)(2) notice or for which the Company has otherwise become ineligible. References herein to the Registration Statement shall include such new registration statement or post-effective amendment, as the case may be.

(o) The Company agrees to pay the required Commission filing fees relating to the Preferred HITS and the Related Securities within the time required by Rule 456(b)(1) under the Securities Act without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r) under the Securities Act.

(p) The Offerors will apply the net proceeds from the sale of the Preferred HITS sold by them in the manner described under the caption "Use of Proceeds" in each of the preliminary prospectus and the Prospectus.

SECTION 4. PAYMENT OF EXPENSES. The Company will pay all expenses incident to the performance of each Offeror's obligations under this Agreement, and will pay for: (i) the preparation, filing, printing, and delivery to the Underwriters of copies of the Registration Statement, any Issuer Free Writing Prospectus, the preliminary prospectus and the Prospectus as originally filed and of each amendment or supplement thereto, (ii) the copying of this Agreement, (iii) the preparation, issuance and delivery of the certificates for the Preferred HITS and the Related Securities, including capital duties, stamp duties and transfer taxes, if any,

payable upon issuance of any of the Preferred HITS or the Related Securities (excluding any fees and expenses relating to the exchange of Preferred HITS for Treasury HITS and Corporate HITS and the exchange of Treasury HITS and Corporate HITS for Preferred HITS) or the sale of the Preferred HITS or the Related Securities, (iv) the fees and disbursements of the Company's and the Trust's counsel and accountants, (v) the qualification of the Preferred HITS or the Related Securities under applicable securities laws in accordance with the provisions of Section 3(f) hereof, including filing fees and the fees and disbursements of Morrison & Foerster LLP, counsel for the Underwriters, in connection therewith and in connection with the preparation of any blue sky survey, (vi) the printing and delivery to the Underwriters of copies of any blue sky survey, (vii) any fee of 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 preparation, printing, reproduction and delivery to the Underwriters of copies of the Indenture, the Declaration, the Certificate of Trust, the Guarantee Agreements, the Collateral Agreement and the Replacement Capital Covenant, (x) the fees and expenses of the Property Trustee, the Delaware Trustee and the Guarantee Trustee, including the fees and disbursements of counsel for the Property Trustee, the Delaware Trustee and the Guarantee Trustee in connection with the Declaration and the Certificate of Trust and the Guarantee Agreements and the Guarantees, as applicable, (xi) any fees payable in connection with the rating of the Preferred HITS and Junior Subordinated Notes, (xii) the cost and charges of any transfer agent or registrar, (xiii) the fees and expenses incurred in connection with the listing of the Preferred HITS and, if applicable, the Related Securities on the New York Stock Exchange, and (xiv) the cost of qualifying the HITS and the Junior Subordinated Notes with DTC.

If this Agreement is terminated by the Representative in accordance with the provisions of Section 5 or Section 7 hereof, the Company shall reimburse the Underwriters for all of their reasonable out-of-pocket expenses, including the reasonable fees and disbursements of Morrison & Foerster LLP, counsel for the Underwriters.

SECTION 5. CONDITIONS OF UNDERWRITERS' OBLIGATIONS. The obligations of the Underwriters hereunder are subject to the accuracy of the respective 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 respective obligations hereunder, and to the following further conditions:

(a) For the period from and after effectiveness of this Agreement and through to the Closing Date:

(i) no stop order suspending the effectiveness of the Registration Statement, or any post-effective amendment to the Registration Statement, shall be in effect and no proceedings for such purpose shall have been instituted or threatened by the Commission, and the Company and the Trust shall not have received from the Commission any notice pursuant to Rule 401(g)(2) under the Securities Act objecting to use of the automatic shelf registration statement form (unless the HITS and the Related Securities are duly registered in the manner contemplated by Rule 401(g)(2) to the satisfaction of the Representatives prior to the Closing Date);

(ii) the Company shall have filed the preliminary prospectus and the Prospectus with the Commission (including the information required by Rule 430B under the Securities Act) in the manner and within the time period required by Rule 424(b) under the Securities Act; or the Company shall have filed a post-effective amendment to the Registration Statement containing the information required by such Rule 430B, and such post-effective amendment shall have become effective (if not automatically effective under the rules of the Commission);

(iii) the Final Term Sheet, and any other material required to be filed by the Company pursuant to Rule 433(d) under the Securities Act, shall have been filed with the Commission within the applicable time periods prescribed for such filings under such Rule or, to the extent applicable, under Rule 164(b); and

(iv) the NASD shall have raised no objection to the fairness and reasonableness of the underwriting terms and arrangements.

(b) On or before the Closing Time, at least one "nationally recognized statistical rating organization" (as defined for purposes of Rule 436(g) under the Securities Act), shall have rated the Preferred HITS in one of its four highest rating categories and (i) no downgrading shall have occurred in the rating accorded the Company's debt securities by any such nationally recognized statistical rating organization, and (ii) no such organization shall have publicly announced that it has under surveillance or review, with possible negative implications, its rating of any of the Company's debt securities.

(c) At the Closing Time, the Representative shall have received:

(1) The favorable opinion of Helms Mulliss & Wicker, PLLC, counsel for the Company and the Trust, dated as of the Closing Time, to the effect of paragraphs (i) and (v) through (xx) below, and the favorable opinion of the General Counsel to the Company (or such other attorney in such department, reasonably acceptable to counsel to the Underwriters, who exercises general supervision or review in connection with a particular securities law matter for 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 and conduct its business as described in the Disclosure Package and the Prospectus, 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) The Company and the Principal Subsidiary Bank are qualified or licensed to do business as a foreign corporation in any jurisdiction in which such counsel 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. § 55, as amended) non-assessable, and, except as otherwise set forth in the Disclosure Package and the Prospectus, all outstanding shares of capital stock of the Principal Subsidiary Bank (except directors' qualifying shares) are owned beneficially, directly or indirectly, by the Company free and clear of any perfected security interest and such counsel is without knowledge of any other security interests, claims, liens or encumbrances.

(iv) Such counsel is without knowledge that (1) there is any 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, the Disclosure Package or the Prospectus which is omitted or not adequately disclosed therein, or (2) any franchise, contract or other document of a character required to be described in the Registration Statement, the Disclosure Package or the Prospectus, or to be filed as an exhibit to the Registration Statement, is not so described or filed or will not be filed within the time periods prescribed by the Securities Act as required.

(v) The Registration Statement has become effective under the Securities Act; no stop order suspending the effectiveness of the Registration Statement, or any post-effective amendment to the Registration Statement, has been issued and such counsel is without knowledge that any proceeding for that purpose has been instituted or threatened, or that the Company or the Trust has received from the Commission any notice pursuant to Rule 401(g)(2) under the Securities Act objecting to the use of the automatic shelf registration statement form; the Registration Statement, the Disclosure Package and 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 Securities Act, the Exchange Act and the Trust Indenture Act.

(vi) This Agreement has been duly authorized, executed and delivered by the Company and, assuming due authorization, execution and delivery by you, constitutes a legal, valid and binding agreement of the Company enforceable against the Company in accordance with its terms, except to the extent enforcement thereof may be limited by 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 any court or governmental authority or agency or body in the United States is necessary or required on behalf of the Company or the Trust in connection with the execution, delivery or performance of the Company Transaction Documents or the Trust Transaction Documents or the offering, issuance or sale of the Preferred HITS, the HITS Guarantee and the Junior Subordinated Notes, the issuance of the Common Securities and the Common Securities Guarantee, the exchange of the Preferred HITS and the related issuances of the Treasury HITS and Corporate HITS in accordance with the terms of the Declaration, or the purchase by the Trust of shares of Preferred Stock pursuant to the Stock Purchase Contract Agreement

except (A) such as may be required under the Securities Act and such as may be required under the blue sky, state securities, insurance or similar laws of the United States, and (B) the qualification of the Declaration, the HITS Guarantee Agreement and the Indenture under the Trust Indenture Act; provided however that such counsel need not opine regarding any approval that may be required by the Federal Reserve regarding the treatment of the HITS for regulatory capital purposes, the issuance of securities and application of proceeds pursuant to the alternative payment mechanism or the Replacement Capital Covenant described in the Prospectus or any repurchase or redemption of the HITS or the Related Securities.

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

(ix) Each of the Guarantee Agreements, the Stock Purchase Contract Agreement, the Replacement Capital Covenant, the Note Purchase Agreement and the Collateral Agreement has been duly authorized, executed and delivered by the Company; and assuming due authorization, execution and delivery by each of the parties thereto other than the Company, each 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; the Remarketing Agreement has been duly and validly authorized; and the HITS Guarantee Agreement has been duly qualified under the Trust Indenture Act. The Guarantee Agreements, the Stock Purchase Contract Agreement, the Replacement Capital Covenant, the Note Purchase Agreement and the Collateral Agreement each conform in all material respects to the descriptions thereof in the Disclosure Package and the Prospectus.

(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 Trust Indenture Act; and the Indenture conforms in all material respects to the description thereof in the Disclosure Package and the Prospectus.

(xi) The Junior Subordinated Notes have been duly authorized and when executed and authenticated 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 Disclosure Package and the Prospectus.

(xii) The shares of Preferred Stock to be issued by the Company to the Trust under the Stock Purchase Contracts on the Stock Purchase Date have been duly and validly authorized and the Company has reserved for issuance out of its authorized capital stock the maximum number of shares of Preferred Stock issuable under the Stock

Purchase Contracts; the Preferred Stock, when certificates evidencing the shares of Preferred Stock have been executed by the Company and authenticated by the Company's transfer agent and issued and delivered against payment therefor as provided in the Stock Purchase Contract Agreement and as provided in the Certificate of Designations will be duly and validly issued and fully paid and non-assessable and will conform in all material respects to the descriptions thereof in the Disclosure Package and the Prospectus.

(xiii) The provisions of the Collateral Agreement are effective to create in favor of the Collateral Agent for the benefit of the Company a valid security interest under the UCC in all Pledged Securities Entitlements; upon possession by the Collateral Agent of the Pledged Securities Entitlements or upon the filing of a UCC Financing Statement in the proper filing office, as applicable, the Collateral Agent will have a perfected security interest, for the benefit of the Company, in the Pledged Security Entitlements.

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

(xv) The forms of the Common Securities, the Preferred HITS and the Declaration conform in all material respects to the descriptions thereof contained in the Disclosure Package and the Prospectus.

(xvi) 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.

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

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

(xix) The execution, delivery and performance of the Company Transaction Agreements, including the issuance and sale of the Junior Subordinated Notes and the Guarantees, and the consummation of the transactions therein contemplated will not conflict with, result in a breach of, or constitute a default under the certificate of incorporation or by-laws of the Company or (1) the terms of any indenture or other material agreement or instrument known to such counsel and to which the Company or the Principal Subsidiary Bank is a party or bound, or (2) any order, law 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.

(xx) If the Preferred HITS are to be listed on the New York Stock Exchange, authorization therefore has been given, subject to official notice of issuance and evidence of satisfactory distribution, or the Offerors have filed a preliminary listing application

with respect to the Preferred HITS with the New York Stock Exchange and such counsel has received no information stating that the Preferred HITS will not be authorized for listing, subject to official notice of issuance and evidence of satisfactory distribution.

In giving their opinions required by this Section, but without opining in connection therewith, such counsel also shall state, that although such counsel expresses no view as to portions of the Registration Statement, the Disclosure Package or the Prospectus consisting of financial statements and other financial, accounting, and statistical information and such counsel 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, the Disclosure Package or the Prospectus or any amendment or supplement thereto (other than as stated in (ix), (x), (xi), (xii) and (xv) above), such counsel has no reason to believe that such remaining portions of the Registration Statement or any amendment thereto as of the time it became effective, the Initial Sale Time, and as of the date of such counsel's opinion, contained or contains 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, subject to the foregoing with respect to financial statements and other financial, accounting and statistical information, the Disclosure Package, as of the Initial Sale Time, contained an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of circumstances under which they were made, not misleading, or that the Prospectus, as amended or supplemented, as of its date and as of the date of such opinion, contained or contains an untrue statement of a material fact or omitted or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

In rendering such opinions, such counsel may rely (A) as to matters involving the application of laws of any jurisdiction other than the State of North Carolina, the General Corporate Law of 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, the Stock Purchase Contract Agreement, the Collateral Agreement, the Remarketing Agreement, the Replacement Capital Covenant, the Note Purchase Agreement and that certain subscription agreement, of even date herewith, between the Company and the Trust covering the Common Securities 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 statutory 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 statutory trust have been made; the Trust has all necessary power and authority to (a) own property and to conduct its business as described in the Registration Statement, the Disclosure Package and the Prospectus, (b) to enter into and perform its obligations under this

Agreement, the Collateral Agreement, the Stock Purchase Contract Agreement, the Note Purchase Agreement and the Declaration and (c) to issue and perform its obligations under the HITS 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 upon execution and delivery in accordance with the terms of the Declaration will be validly issued and represent undivided beneficial interests in the assets of the Trust.

(iv) The Preferred HITS have been duly authorized by the Declaration and, subject to the terms of the Declaration, when delivered to and paid for by the Underwriters pursuant to this Agreement, will be duly and validly issued, and (subject to the qualifications set forth in this paragraph) fully paid and non-assessable undivided beneficial interests in the assets of the Trust; the holders of the Preferred HITS 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 Preferred HITS is not subject to preemptive or other similar rights. The Holders may be obligated, pursuant to the Declaration, to (i) provide indemnity and/or security in connection with and pay taxes or governmental charges arising from the transfer or exchange of HITS certificates and the issuance of replacement HITS certificates and (ii) provide security or indemnity in connection with requests of or directions to the Property Trustee to exercise its rights and remedies under the Declaration.

(v) The Treasury HITS and the Corporate HITS have been duly authorized by the Declaration and when issued upon an Exchange (as defined in the Declaration) in accordance with the terms of the Declaration, will be duly and validly issued, and (subject to the qualifications set forth in the last sentence of paragraph (iv) above) will be fully paid and non-assessable undivided beneficial interests in the assets of the Trust; the holders of the Treasury HITS and Corporate HITS 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 Treasury HITS and the Corporate HITS is not subject to preemptive or other similar rights.

(vi) This Agreement, the Collateral Agreement and the Stock Purchase Contract Agreement have been duly authorized by the Trust.

(vii) The issuance and sale by the Trust of the Preferred HITS and the Common Securities and the issuance of the Treasury HITS and Corporate HITS upon an Exchange in accordance with the terms of the Declaration, the execution, delivery and performance by the Trust of this Agreement, the Collateral Agreement and the Stock Purchase Contract Agreement, the consummation by the Trust of the transactions contemplated

hereby and thereby and the compliance by the Trust with its obligations hereunder and thereunder 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.

(viii) No authorization, approval, consent or order of any Delaware court or Delaware governmental authority or Delaware agency is necessary or required on behalf of the Trust in connection with the execution, delivery or performance of the Underwriting Agreement, the Collateral Agreement and the Stock Purchase Contract Agreement, or the offering, issuance or sale of the Preferred HITS, the issuance of the Common Securities, the Exchange of the Preferred HITS and the related issuances of the Treasury HITS and Corporate HITS in accordance with the terms of the Declaration, or the purchase by the Trust of shares of Preferred Stock pursuant to the Stock Purchase Contract Agreement.

(ix) The issuance by the Company of Preferred Stock pursuant to the Stock Purchase Contract Agreement and the Certificate of Designations has been duly authorized and, when certificates evidencing the shares of Preferred Stock have been executed by the Company and authenticated by the Company's transfer agent in the manner provided for in the Stock Purchase Contract Agreement and delivered on the Stock Purchase Date, such shares will be duly and validly issued, fully paid and non-assessable.

(x) Assuming that the Trust derives no income from or connected with services provided within the State of Delaware and has no assets, activities (other than maintaining the Delaware Trustee and the filing of documents with the Secretary of State of the State of Delaware) or employees in the State of Delaware and assuming that the Trust is treated as a grantor trust or as an association not taxable as a corporation for federal income tax purposes, the holders of HITS (other than those holders who reside or are domiciled in the State of Delaware) will have no liability for income taxes imposed by the State of Delaware solely as a result of their participation in the Trust, and the Trust will not be liable for any income tax imposed by the State of Delaware.

(3) The favorable opinion of Richards, Layton & Finger, P.A., relating to The Bank of New York (Delaware), as Delaware Trustee under the Declaration, 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 have 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 necessary or required for the execution, delivery or performance by the Delaware Trustee of the Declaration.

(4) The favorable opinion, dated as of the Closing Time, of Emmet, Marvin & Martin, LLP, counsel to The Bank of New York Trust Company, N.A., as Debt Trustee under the Indenture, and to the Bank of New York, as Guarantee Trustee under the HITS 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 Trust Company, N.A. duly organized and is validly existing as a national banking association organized and in good standing under the laws of the United States with all necessary power and authority to execute and deliver, and to carry out and perform its obligations under the terms of the Indenture. 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 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 and the HITS 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 HITS 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 HITS 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 HITS 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 federal banking authority is necessary or 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 necessary or 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 HITS Guarantee Agreement.

(5) The favorable opinion, dated as of the Closing Time, of Morrison & Foerster 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 and with respect to the Preferred HITS and the Related Securities, the Indenture, this Agreement, the Registration Statement, the Disclosure Package, the Prospectus and any other related matters as the Representative may require.

In giving its opinion, Morrison & Foerster LLP may rely as to certain matters of (i) Delaware law upon the opinion of Richards, Layton & Finger P.A., counsel for the Offerors, which shall be delivered in accordance with Section 5(c)(2) hereto and (ii) North Carolina law upon the opinion of Helms Mulliss & Wicker, PLLC, which shall be delivered in accordance with Section 5(c)(1) hereto.

(6) The favorable opinion of Morrison & Foerster LLP, special tax counsel to the Company and the Trust, as to certain federal tax matters set forth in the Disclosure Package and the Prospectus under "Certain U.S. Federal Income Tax Consequences"

(d) At the 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, the Disclosure Package and the Prospectus, any material adverse change, or any development involving a prospective material adverse change, in the condition (financial or other), earnings, business or properties 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 Disclosure Package and the Prospectus and the Representative 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 the Closing Time, to the effect that the signers of such certificate have carefully examined the Registration Statement, the Disclosure Package, the Prospectus and this Agreement and they are without knowledge that: (i) there has been any material adverse change or any development involving a prospective material adverse change in the condition (financial or other), earnings, business or properties 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 Disclosure Package and the Prospectus, (ii) the representations and warranties in Section 1 hereof are not true and correct with the same force and effect as though expressly made at and as of the Closing Time, (iii) the Trust or the Company, as the case may be,

has not performed or complied with all agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to the Closing Time, (iv) any stop order suspending the effectiveness of the Registration Statement has been issued or any proceedings for that purpose have been initiated or threatened by the Commission, and (v) any litigation or proceeding shall be threatened or pending to restrain or enjoin the issuance or delivery of the Preferred HITS, or which in any way affects the validity of the Preferred HITS or the Related Securities.

(e) At the time this Agreement is executed, PricewaterhouseCoopers LLP shall have furnished to the Representative a letter or letters, dated the date of this Agreement, in form and substance satisfactory to the Representative, stating in effect that:

(1) They are an independent registered public accounting firm with respect to the Company within the meaning of the Securities Act and the applicable rules and regulations thereunder adopted by the Commission and the Public Company Accounting Oversight Board (United States).

(2) 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, the preliminary prospectus and the Prospectus comply as to form in all material respects with the applicable accounting requirements of the Securities Act and the Exchange Act.

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

(i) Reading the minutes of the meetings of the stockholders, the board of directors, executive committee and audit committee of the Company and the board of directors of the Principal Subsidiary Bank 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;

(ii) Performing the procedures specified by the American Institute of Certified Public Accountants for a review of interim financial information as described in Statement of Accounting Standards No. 100, 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, the preliminary prospectus and the 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, the preliminary prospectus and the Prospectus to the date of the latest available interim financial data; and

(iii) 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:

(a) the unaudited condensed consolidated interim financial statements, included or incorporated by reference in the Registration Statement, the preliminary prospectus and the Prospectus, do not comply as to form in all material respects with the applicable accounting requirements of the Exchange Act;

(b) any material modifications should be made to the unaudited condensed consolidated interim financial statements, included or incorporated by reference in the Registration Statement, the preliminary prospectus and the Prospectus, for them to be in conformity with generally accepted accounting principles;

(c)(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 common stock and additional paid-in capital or the consolidated long-term debt (other than scheduled repayments of such debt) 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, the preliminary prospectus 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 common stock and additional paid-in capital or the consolidated long-term debt (other than scheduled repayments of such debt) of the Company and the subsidiaries on a consolidated basis, except in all instances for changes or decreases which the Registration Statement, the preliminary prospectus and the Prospectus discloses have occurred or may occur, or PricewaterhouseCoopers LLP shall state any specific changes or decreases.

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, the preliminary prospectus and the Prospectus and which are specified by the Representative 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 Closing Time, PricewaterhouseCoopers LLP shall have furnished to the Representative a letter or letters, dated the Closing Date, in form and substance satisfactory to the Representative, to the effect set forth in this subsection (e).

(f) Subsequent to the respective dates as of which information is given in the Registration Statement, the Disclosure Package and the Prospectus, there shall not have been (i) any change or decrease specified in the letter or letters referred to in the immediate prior sub-section or (ii) any change, or any development involving a prospective change, in or affecting the condition (financial or other), earnings, business or properties of the Trust or the Company and its subsidiaries, considered as one enterprise, the effect of which, in any case referred to in clause (i) or (ii) above, is, in the judgment of the Representative, so material and adverse as to make it impractical or inadvisable to proceed with the offering or the delivery of the Preferred HITS and the Related Securities as contemplated by the Registration Statement, the Disclosure Package and the Prospectus.

(g) At the 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 Preferred HITS and the Related 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 Preferred HITS and the Related Securities as herein contemplated shall be satisfactory in form and substance to the Representative and Morrison & Foerster LLP, counsel for the Underwriters.

(h) There shall not have come to the Representative's attention any facts that would cause the Representative to believe that the Disclosure Package, as of the Initial Sale Time, or the Prospectus, at the time it was required to be delivered to a purchaser of the Preferred HITS, included an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in light of the circumstances existing at the time of such delivery, not misleading.

(i) At the Closing Time, the Preferred HITS shall have been authorized for listing on the New York Stock Exchange upon notice of issuance or the Offerors shall have filed a preliminary listing application with respect thereto with the New York Stock Exchange and shall not have received any information stating that the Preferred HITS will not be authorized for listing, subject to official notice of issuance and evidence of satisfactory distribution.

(j) On or after the Initial Sale Time, the Preferred HITS shall have been accorded a rating of not less than "A" by Standard & Poor's Ratings Service, not less than "A1" by Moody's Investors Service, Inc. and not less than "A+" by Fitch Ratings, Inc.

(k) In connection with the sale and purchase of the Preferred HITS and the Related Securities, if any condition specified in this Section with respect thereto shall not have been fulfilled in all material respects when and as required to be fulfilled, this Agreement may be terminated by the Representative by notice to the Offerors, in writing or by telephone or telegraph confirmed in writing, at any time at or prior to the 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.

SECTION 6. INDEMNIFICATION AND CONTRIBUTION

(a) The Offerors jointly and severally agree to indemnify and hold harmless each Underwriter and each person, if any, who controls any Underwriter within the meaning of the Securities Act and the Exchange Act against any loss, claim, damage, liability or expense, as incurred, to which such Underwriter or such controlling person may become subject, insofar as such loss, claim, damage, liability or expense (or actions in respect thereof as contemplated below) arises out of or is based upon (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, or any amendment thereto, including any information deemed to be a part thereof pursuant to Rule 430B under the Securities Act, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading; or (ii) any untrue statement or alleged

untrue statement of a material fact contained in the Disclosure Package or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, and to reimburse each Underwriter and each such controlling person for any and all expenses (including the fees and disbursements of counsel chosen by Banc of America Securities LLC) as such expenses are reasonably incurred by such Underwriter or such controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action; provided, however, that the foregoing indemnity agreement shall not apply to any loss, claim, damage, liability or expense to the extent, but only to the extent, arising out of or based upon any untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with the Underwriter Information 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 the Debt Trustee, Guarantee Trustee or Delaware Trustee. The indemnity agreement set forth in this Section 6(a) shall be in addition to any liabilities that the Offerors may otherwise have.

(b) Each Underwriter agrees, severally and not jointly, to indemnify and hold harmless the Trust, the Trustees, the Company, each of the Company's directors, each of the Company's officers and each of the Trustees who signed the Registration Statement, and each person, if any, who controls the Company or the Trust within the meaning of the Securities Act or the Exchange Act, against any loss, claim, damage, liability or expense, as incurred, to which the Company or the Trust, or any such director, officer, Trustee or controlling person may become subject, insofar as such loss, claim, damage, liability or expense (or actions in respect thereof as contemplated below) arises out of or is based upon (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, or any amendment thereto, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading; or (ii) upon any untrue statement or alleged untrue statement of a material fact contained in the Base Prospectus, the preliminary prospectus or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, in each case to the extent, and only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Registration Statement, the Base Prospectus, the preliminary prospectus or the Prospectus (or any amendment or supplement thereto), in reliance upon and in conformity with the Underwriter Information; and to reimburse the Company, the Trust, or any such director, officer, Trustee or controlling person for any legal and other expense reasonably incurred by the Company, the Trust, or any such director, officer, Trustee or controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action. The Offerors hereby acknowledges that the only information that the Underwriters have furnished to the Offerors expressly for use in the Registration Statement, the Disclosure Package or the Prospectus (or any amendment or supplement thereto) are the names of the Underwriters, the sentences relating to reallowances and concessions and the fifth, sixth and seventh paragraphs under the caption "Underwriting" in the preliminary prospectus and the Prospectus. The indemnity agreement set forth in this Section 6(b) shall be in addition to any liabilities that each Underwriter may otherwise have.

(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 an indemnifying party under this Section 6, notify the indemnifying party in writing of the commencement thereof; but the failure to so notify the indemnifying party (i) will not relieve it from liability under paragraph (a) or (b) above unless and to the extent it did not otherwise learn of such action and such failure results in the forfeiture by the indemnifying party of substantial rights and defenses and (ii) will not, in any event, relieve the indemnifying party from any liability other than the indemnification obligation provided in paragraph (a) or (b) above. In case any such action is brought against any indemnified party and such indemnified party seeks or intends to seek indemnity from an indemnifying party, the indemnifying party will be entitled to participate in, and, to the extent that it shall elect, jointly with all other indemnifying parties similarly notified, 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 a conflict may arise between the positions of the indemnifying party and the indemnified party in conducting the defense of any such action or that there may be legal defenses available to it and/or other indemnified parties that 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 assume 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 such indemnifying party's 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 accordance with the proviso to the preceding sentence (it being understood, however, that the indemnifying party shall not be liable for the expenses of more than one separate counsel (other than local counsel approved by the Representatives)), representing the indemnified parties who are parties to such action or (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 action, in each of which cases the fees and expenses of counsel shall be at the expense of the indemnifying party.

(d) The indemnifying party under this Section 6 shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party against any loss, claim, damage, liability or expense by reason of such settlement or judgment. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement, compromise or consent to the entry of judgment in any pending or threatened action, suit or proceeding in respect of which any indemnified party is or could have been a party and indemnity was or could have been sought hereunder by such indemnified party, unless such settlement, compromise or consent (i) includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such action, suit or proceeding and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of any indemnified party.

(e) If the indemnification provided for in Sections 6(a) through (d) is for any reason unavailable to or otherwise insufficient to hold harmless an indemnified party in respect of any losses, claims, damages, liabilities or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount paid or payable by such indemnified party, as incurred, as a result of any losses, claims, damages, liabilities or expenses referred to therein (i) in such proportion as is appropriate to reflect the relative benefits received by the Offerors, on the one hand, and the Underwriters, on the other hand, from the offering of the Preferred HITS and the Related Securities pursuant to this Agreement or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Offerors, on the one hand, and the Underwriters, on the other hand, in connection with the statements or omissions which resulted in such losses, claims, damages, liabilities or expenses, as well as any other relevant equitable considerations. The relative benefits received by the Offerors, on the one hand, and the Underwriters, on the other hand, in connection with the offering of the Preferred HITS and the Related Securities pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of the Preferred HITS and the Related Securities pursuant to this Agreement (before deducting expenses) received by the Offerors, and the total underwriting commissions received by the Underwriters, in each case as set forth on the front cover page of the Prospectus, bear to the aggregate initial public offering price of the Preferred HITS as set forth on such cover. The relative fault of the Offerors, on the one hand, and the Underwriters, on the other hand, shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact or any such inaccurate or alleged inaccurate representation or warranty relates to information supplied by the Offerors, on the one hand, or the Underwriters, on the other hand, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The amount paid or payable by a party as a result of the losses, claims, damages, liabilities and expenses referred to above shall be deemed to include, subject to the limitations set forth in Section 6(c), any legal or other fees or expenses reasonably incurred by such party in connection with investigating or defending any action or claim. The provisions set forth in Section 6(c) with respect to notice of commencement of any action shall apply if a claim for contribution is to be made under this Section 6(e); provided, however, that no additional notice shall be required with respect to any action for which notice has been given in accordance with Section 6(c) for purposes of indemnification. The Offerors and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 6(e) were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 6(e).

Notwithstanding the provisions of this Section 6(e), no Underwriter shall be required to contribute any amount in excess of the underwriting discounts received by such Underwriter in connection with the Preferred HITS or Related Securities underwritten by it. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations to contribute pursuant to this Section 6(e) are several, and not joint, in proportion to their respective underwriting commitments as set forth opposite their

names in Schedule A. For purposes of this Section 6(e), each Underwriter and each person, if any, who controls an Underwriter within the meaning of the Securities Act and the Exchange Act shall have the same rights to contribution as such Underwriter, and each director of the Company, each officer of the Company and each Trustee of the Trust who signed the Registration Statement, and each person, if any, who controls the Company or the Trust within the meaning of the Securities Act and the Exchange Act shall have the same rights to contribution as the Company or the Trust. 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 (e), notify such party or parties from whom contribution may be sought, as contemplated by the preceding paragraph. However, 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 (e).

(f) The Company agrees to indemnify the Trust against all losses, claims, damages or liabilities incurred by 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 Representative, by notice given to the Offerors prior to delivery of and payment for the Preferred HITS, 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, or (ii) a banking moratorium or a material disruption in the commercial banking or securities settlement or clearance services in the United States shall have been declared by Federal or New York State authorities, or (iii) there shall have occurred any outbreak or material escalation of hostilities or other calamity or crisis (in the United States or elsewhere) the effect of which on the financial markets of the United States is such as to make it, in the judgment of the Representative, impracticable to market the Preferred HITS.

SECTION 8. DEFAULT BY ONE OR MORE OF THE UNDERWRITERS. If one or more of the Underwriters shall fail at the Closing Time to purchase all or part of the Preferred HITS that it or they are obligated to purchase under this Agreement (the "Defaulted Securities"), the Representative 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 Representative 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 Preferred HITS 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 Preferred HITS this Agreement shall terminate without liability on the part of any non-defaulting Underwriter, the Company or the Trust.

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 Representative or the Offerors shall have the right to postpone the Closing Time for a period not exceeding seven days in order to effect any required changes in the Disclosure Package, 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, NY1-301-29-01, 9 West 57th Street, New York, NY 10019, Attn.: Caspar Bentinck, Principal, with a copy to: Morrison & Foerster LLP, 1290 Avenue of the Americas, New York, New York 10104-0050, Attn.: James R. Tanenbaum; notices to the Trust and the Company shall be directed to them at Bank of America Corporation, Corporate Treasury Securities Administration, Bank of America Corporate Center, NC1-007-07-06, 100 North Tryon Street, Charlotte, N.C. 28255, with a copy to each of: Bank of America Corporation, Legal Department, NC1-002-29-01, 101 South Tryon Street, Charlotte, North Carolina 28255 Attn.: General Counsel; and Helms Mulliss & Wicker, PLLC, 201 North Tryon Street, Charlotte, North Carolina 28202, Attn.: Boyd C. Campbell, Jr.

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

SECTION 11. NO FIDUCIARY DUTIES; AGREEMENT COMPLETE

(a) Each of the Company and the Trust acknowledges and agrees that: (i) the purchase and sale of the Preferred HITS pursuant to this Agreement, including the determination of the public offering price of the Preferred HITS and any related discounts and commissions, is an arm's-length commercial transaction between the Company and the Trust, on the one hand, and the several Underwriters, on the other hand, and each of the Company and the Trust is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated by this Agreement; (ii) in connection with each transaction contemplated hereby and the process leading to such transaction each Underwriter is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary of the Company, or its affiliates, stockholders, creditors or employees or any other party, including the

Trust; (iii) no Underwriter has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Company or the Trust with respect to any of the transactions contemplated hereby or the process leading thereto (irrespective of whether such Underwriter has advised or is currently advising the Company or the Trust on other matters) and no Underwriter has any obligation to the Company or the Trust with respect to the offering contemplated hereby except the obligations expressly set forth in this Agreement; (iv) the several Underwriters and their respective affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company or the Trust and that the several Underwriters have no obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Underwriters have not provided any legal, accounting, regulatory or tax advice with respect to the offering contemplated hereby and each of the Company and the Trust has consulted its own legal, accounting, regulatory and tax advisors to the extent it deemed appropriate.

(b) This Agreement supersedes all prior agreements and understandings (whether written or oral) between the Company, the Trust and the several Underwriters, or any of them, with respect to the subject matter hereof. Each of the Company and the Trust hereby waives and releases, to the fullest extent permitted by law, any claims that the Company or the Trust may have against the several Underwriters with respect to any breach or alleged breach of agency or fiduciary duty.

SECTION 12. 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 13. 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.

If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Company and the Trust 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: /s/ Ann J. Travis
Name: Ann J. Travis
Title: Senior Vice President

BAC CAPITAL TRUST XIV

By: /s/ James T. Houghton
Name: James T. Houghton
Title: Regular Trustee

By: /s/ Ann J. Travis
Name: Ann J. Travis
Title: Regular Trustee

By: /s/ Richard L. Nichols, Jr.
Name: Richard L. Nichols, Jr.
Title: Regular Trustee

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

BANC OF AMERICA SECURITIES LLC

For itself and as the Representative
of the several Underwriters named in
Schedule A hereto.

By: BANC OF AMERICA SECURITIES LLC

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

SCHEDULE A

NAME OF UNDERWRITERS	NUMBER OF Preferred HITS
Banc of America Securities LLC	824,500
Bear, Stearns & Co. Inc.	8,500
UBS Securities LLC	8,500
Muriel Siebert & Co.	4,250
The Williams Capital Group, L.P.	4,250
Total	850,000

SCHEDULE B

Underwriting Agreement dated February 12, 2007

Registration Statement No. 333-133852

Underwriters: Banc of America Securities LLC
Bear, Stearns & Co. Inc.
UBS Securities LLC
Muriel Siebert & Co.
The Williams Capital Group, L.P.

Address of Underwriters:

c/o Banc of America Securities LLC
NY1-301-29-01
9 West 57th Street
New York, NY 10019
Attention: Caspar Bentinck

Title, Purchase Price and Description of Securities:

Title: BAC Capital Trust XIV 5.63% Fixed to Floating Rate Preferred Hybrid Income Term Securities (the "Preferred HITS")

1. The initial public offering price per security for the Preferred HITS, determined as provided in said Section 2, shall be $1,000.

2. The purchase price per security for the Preferred HITS to be paid by the several Underwriters shall be $1,000, being an amount equal to the initial public offering price set forth above.

3. The compensation per Preferred HITS to be paid by the Company to the several Underwriters in respect of their commitments hereunder shall be $10.

Closing Date, Time and Location: February 16, 2007, 9:00 A.M. New York City time, Offices of Morrison & Foerster LLP.

Stock Exchange Listing: Application will be made to list the Preferred HITS on the New York Stock Exchange.

SCHEDULE C
ISSUER FREE WRITING PROSPECTUSES

Final Term Sheet (as set forth in Schedule D)

SCHEDULE D

BAC CAPITAL TRUST XIV

5.63% Fixed to Floating Rate Preferred Hybrid Income Term Securities

FINAL TERM SHEET

Dated February 12, 2007

Exhibit 4.1

CERTIFICATE OF DESIGNATIONS
OF
FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES F
OF
BANK OF AMERICA CORPORATION

Pursuant to Section 151 of the
General Corporation Law of the State of Delaware

Bank of America Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "*Corporation*"), does hereby certify that:

1. At a meeting duly convened and held on April 26, 2006, the Board of Directors of the Corporation (the "*Board*") duly adopted resolutions (a) authorizing the issuance and sale by the Corporation of one or more series of the Corporation's preferred stock, and (b) appointing a Committee (the "*Committee*") of the Board to act on behalf of the Board in establishing the number of authorized shares, the dividend rate and other powers, designations, preferences and rights of the preferred stock.

2. Thereafter, on February 12, 2007, the Committee duly adopted the following resolution by written consent:

"**RESOLVED**, that the powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, of the Corporation's Floating Rate Non-Cumulative Preferred Stock, Series F, including those established by the Board and the number of authorized shares and dividend rate established hereby, are authorized and approved as set forth in Exhibit A hereto, which is incorporated herein by reference."

IN WITNESS WHEREOF, this Certificate of Designations is executed on behalf of the Corporation by its duly authorized officer this 15th day of February, 2007.

BANK OF AMERICA CORPORATION

/s/ TERESA M. BRENNER

Name: Teresa M. Brenner
Title: Associate General Counsel

EXHIBIT A

TO

CERTIFICATE OF DESIGNATIONS

OF

FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES F

OF

BANK OF AMERICA CORPORATION

Section 1. Designation. The designation of the series of preferred stock shall be "Floating Rate Non-Cumulative Preferred Stock, Series F" (the "*Series F Preferred Stock*"). Each share of Series F Preferred Stock shall be identical in all respects to every other share of Series F Preferred Stock. Series F Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

Section 2. Number of Shares. The number of authorized shares of Series F Preferred Stock shall be 7,001. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series F Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors of the Corporation, the Committee or any other duly authorized committee of the Board of Directors of the Corporation and by the filing of a certificate pursuant to the provisions of the General Corporation Law of the State of Delaware stating that such increase or reduction, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series F Preferred Stock.

Section 3. Definitions. As used herein with respect to Series F Preferred Stock:

"*Business Day*" means each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina.

"*Calculation Agent*" shall mean The Bank of New York Trust Company, N.A., or such other bank or entity as may be appointed by the Corporation to act as calculation agent for the Series F Preferred Stock.

"*Depositary Company*" shall have the meaning set forth in Section 6(d) hereof.

"*Dividend Determination Date*" shall have the meaning set forth below in the definition of "Three-Month LIBOR."

"*Dividend Payment Date*" shall have the meaning set forth in Section 4(a) hereof.

"*Dividend Period*" shall have the meaning set forth in Section 4(a) hereof.

"*DTC*" means The Depository Trust Company, together with its successors and assigns.

"*Junior Stock*" means the Corporation's common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series F Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

"*London Banking Day*" means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London, England.

"*Parity Stock*" means (a) the Corporation's 7% Cumulative Redeemable Preferred Stock, Series B, (b) the Corporation's 6.204% Non-Cumulative Preferred Stock, Series D, (c) the Corporation's Floating Rate Non-Cumulative Preferred Stock, Series E, (d) the Corporation's Adjustable Rate Non-Cumulative Preferred Stock, Series G and (e) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series F Preferred Stock in the payment of dividends or in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

"*Senior Stock*" means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series F Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

"*Series F Preferred Stock*" shall have the meaning set forth in Section 1 hereof.

"*Telerate Page 3750*" means the display page so designated on the Moneyline/Telerate Service (or any other page as may replace that page on that service, or any other service as may be nominated as the information vendor, for the purpose of displaying rates or prices comparable to the London Interbank Offered Rate for U.S. dollar deposits).

"*Three-Month LIBOR*" means, with respect to any Dividend Period, the offered rate (expressed as a percentage per annum) for deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period that appears on Telerate Page 3750 as of 11:00 a.m. (London time) on the second London Banking Day immediately preceding the first day of that Dividend Period (the "*Dividend Determination Date*"). If such rate does not appear on Telerate Page 3750, Three-Month LIBOR will be determined on the basis of the rates at which deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than $1,000,000 are offered to prime banks in the London interbank market by four major banks in the London interbank market selected by the Corporation, at approximately 11:00 a.m., London time on the second London Banking Day immediately preceding the first day of that Dividend Period. The Calculation Agent will request the principal London office of each of such banks to provide a quotation of its rate. If at least two such quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of such

quotations. If fewer than two quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of the rates quoted by three major banks in New York City selected by the Corporation, at approximately 11:00 a.m., New York City time, on the first day of that Dividend Period for loans in U.S. dollars to leading European banks for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than $1,000,000. However, if fewer than three banks selected by the Corporation to provide quotations are not quoting as described above, Three-Month LIBOR for that Dividend Period will be the same as Three-Month LIBOR as determined for the previous Dividend Period, or in the case of the first Dividend Period, the most recent rate that could have been determined in accordance with the first sentence of this paragraph had Series F Preferred Stock been outstanding. The Calculation Agent's establishment of Three-Month LIBOR and calculation of the amount of dividends for each Dividend Period will be on file at the principal offices of the Corporation, will be made available to any holder of Series F Preferred Stock upon request and will be final and binding in the absence of manifest error.

Section 4. Dividends.

(a) Rate. Holders of Series F Preferred Stock shall be entitled to receive, if, as and when declared by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation, but only out of assets legally available therefor, non-cumulative cash dividends on the liquidation preference of $100,000 per share of Series F Preferred Stock, and no more, payable quarterly in arrears on each March 15, June 15, September 15 and December 15; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day, unless that day falls in the next calendar year, in which case payment of such dividend will occur on the immediately preceding Business Day (in either case, without any interest or other payment in respect of such delay) (each such day on which dividends are payable a "*Dividend Payment Date*"). The period from and including the date of issuance of the Series F Preferred Stock or any Dividend Payment Date to but excluding the next Dividend Payment Date is a "*Dividend Period.*" Dividends on each share of Series F Preferred Stock will accrue on the liquidation preference of $100,000 per share for each Dividend Period (1) from the date of issuance to, but excluding, the Dividend Payment Date in March 2012 (if issued prior to that date) at a rate per annum equal to Three-Month LIBOR plus a spread of 0.40% and (2) thereafter at a rate per annum equal to the greater of (i) Three-Month LIBOR plus a spread of 0.40% and (ii) 4.00%. The record date for payment of dividends on the Series F Preferred Stock shall be the last Business Day of the calendar month immediately preceding the month during which the Dividend Payment Date falls. The amount of dividends payable shall be computed on the basis of a 360-day year and the actual number of days elapsed in a Dividend Period.

(b) Non-Cumulative Dividends. Dividends on shares of Series F Preferred Stock shall be non-cumulative. To the extent that any dividends payable on the shares of Series F Preferred Stock on any Dividend Payment Date are not declared and paid, in full or otherwise, on such Dividend Payment Date, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable and the Corporation shall have no obligation to pay, and the holders of Series F Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period after the Dividend Payment Date for such Dividend Period or interest with respect to such

dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series F Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

(c) Priority of Dividends. So long as any share of Series F Preferred Stock remains outstanding, (i) no dividend shall be declared or paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or a*pro rata* portion, of the Series F Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case unless full dividends on all outstanding shares of Series F Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation's Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series F Preferred Stock remain outstanding, no dividends shall be declared or paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series F Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series F Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series F Preferred Stock and the holders of any Parity Stock. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series F Preferred Stock and the aggregate of the current and accrued dividends due on the Parity Stock. No interest will be payable in respect of any dividend payment on shares of Series F Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may be declared and paid on any Junior Stock from time to time out of any assets legally available therefor, and the shares of Series F Preferred Stock shall not be entitled to participate in any such dividend.

Section 5. Liquidation Rights.

(a) Liquidation. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series F Preferred Stock shall be entitled, out of assets legally available therefor, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and

subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series F Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of $100,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series F Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

(b) Partial Payment. If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series F Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series F Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences plus any dividends which have been declared but not yet paid of Series F Preferred Stock and all such Parity Stock.

(c) Residual Distributions. If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series F Preferred Stock and all holders of any Parity Stock, then the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

(d) Merger, Consolidation and Sale of Assets Not Liquidation. For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

Section 6. Redemption.

(a) Optional Redemption. The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors of the Corporation, may redeem out of funds legally available therefor, in whole or in part, the shares of Series F Preferred Stock at the time outstanding, at any time on or after the later of March 15, 2012 and the date of original issuance of the Series F Preferred Stock, upon notice given as provided in Section 6(b) below. The redemption price for shares of Series F Preferred Stock shall be $100,000 per share plus dividends that have been declared but not paid plus accrued and unpaid dividends for the then-current Dividend Period to the redemption date.

(b) Notice of Redemption. Notice of every redemption of shares of Series F Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 15 days and not more than 60 days

before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series F Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series F Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series F Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series F Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

(c) Partial Redemption. In case of any redemption of only part of the shares of Series F Preferred Stock at the time outstanding, the shares of Series F Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series F Preferred Stock in proportion to the number of Series F Preferred Stock held by such holders or by lot or in such other manner as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine to be fair and equitable. Subject to the provisions of this Section 6, the Board of Directors of the Corporation, the Committee or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series F Preferred Stock shall be redeemed from time to time.

(d) Effectiveness of Redemption. If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other assets, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors (the "*Depositary Company*") in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue after such redemption date, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depositary Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

Section 7. Voting Rights. The holders of the Series F Preferred Stock will have no voting rights and will not be entitled to elect any directors, except as expressly provided by law.

Section 8. Preemption and Conversion. The holders of Series F Preferred Stock shall not have any rights of preemption or rights to convert such Series F Preferred Stock into shares of any other class of capital stock of the Corporation.

Section 9. Rank. Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors of the Corporation, the Committee or any authorized committee of the Board of Directors of the Corporation, without the vote of the holders of the Series F Preferred Stock, may authorize and issue additional shares of Junior Stock, Parity Stock or any class or series of Senior Stock or any other securities ranking senior to the Series F Preferred Stock as to dividends and the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

Section 10. Repurchase. Subject to the limitations imposed herein, the Corporation may purchase and sell Series F Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

Section 11. Unissued or Reacquired Shares. Shares of Series F Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

Section 12. No Sinking Fund. Shares of Series F Preferred Stock are not subject to the operation of a sinking fund.

Exhibit 4.2

CERTIFICATE OF DESIGNATIONS
OF
ADJUSTABLE RATE NON-CUMULATIVE PREFERRED STOCK, SERIES G
OF
BANK OF AMERICA CORPORATION

Pursuant to Section 151 of the
General Corporation Law of the State of Delaware

Bank of America Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "*Corporation*"), does hereby certify that:

1. At a meeting duly convened and held on April 26, 2006, the Board of Directors of the Corporation (the "*Board*") duly adopted resolutions (a) authorizing the issuance and sale by the Corporation of one or more series of the Corporation's preferred stock, and (b) appointing a Committee (the "*Committee*") of the Board to act on behalf of the Board in establishing the number of authorized shares, the dividend rate and other powers, designations, preferences and rights of the preferred stock.

2. Thereafter, on February 12, 2007, the Committee duly adopted the following resolution by written consent:

"**RESOLVED**, that the powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, of the Corporation's Adjustable Rate Non-Cumulative Preferred Stock, Series G, including those established by the Board and the number of authorized shares and dividend rate established hereby, are authorized and approved as set forth in Exhibit A hereto, which is incorporated herein by reference."

IN WITNESS WHEREOF, this Certificate of Designations is executed on behalf of the Corporation by its duly authorized officer this 15th day of February, 2007.

BANK OF AMERICA CORPORATION

/s/ TERESA M. BRENNER

Name: Teresa M. Brenner
Title: Associate General Counsel

EXHIBIT A

TO

CERTIFICATE OF DESIGNATIONS

OF

ADJUSTABLE RATE NON-CUMULATIVE PREFERRED STOCK, SERIES G

OF

BANK OF AMERICA CORPORATION

Section 1. Designation. The designation of the series of preferred stock shall be "Adjustable Rate Non-Cumulative Preferred Stock, Series G" (the "*Series G Preferred Stock*"). Each share of Series G Preferred Stock shall be identical in all respects to every other share of Series G Preferred Stock. Series G Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

Section 2. Number of Shares. The number of authorized shares of Series G Preferred Stock shall be 8,501. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series G Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors of the Corporation, the Committee or any other duly authorized committee of the Board of Directors of the Corporation and by the filing of a certificate pursuant to the provisions of the General Corporation Law of the State of Delaware stating that such increase or reduction, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series G Preferred Stock.

Section 3. Definitions. As used herein with respect to Series G Preferred Stock:

"*Business Day*" means each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina.

"*Calculation Agent*" shall mean The Bank of New York Trust Company, N.A., or such other bank or entity as may be appointed by the Corporation to act as calculation agent for the Series G Preferred Stock.

"*Depositary Company*" shall have the meaning set forth in Section 6(d) hereof.

"*Dividend Determination Date*" shall have the meaning set forth below in the definition of "Three-Month LIBOR."

"*Dividend Payment Date*" shall have the meaning set forth in Section 4(a) hereof.

"*Dividend Period*" shall have the meaning set forth in Section 4(a) hereof.

"*DTC*" means The Depository Trust Company, together with its successors and assigns.

"*Junior Stock*" means the Corporation's common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series G Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

"*London Banking Day*" means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London, England.

"*Parity Stock*" means (a) the Corporation's 7% Cumulative Redeemable Preferred Stock, Series B, (b) the Corporation's 6.204% Non-Cumulative Preferred Stock, Series D, (c) the Corporation's Floating Rate Non-Cumulative Preferred Stock, Series E, (d) the Corporation's Floating Rate Non-Cumulative Preferred Stock, Series F and (e) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series G Preferred Stock in the payment of dividends or in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

"*Senior Stock*" means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series G Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

"*Series G Preferred Stock*" shall have the meaning set forth in Section 1 hereof.

"*Telerate Page 3750*" means the display page so designated on the Moneyline/Telerate Service (or any other page as may replace that page on that service, or any other service as may be nominated as the information vendor, for the purpose of displaying rates or prices comparable to the London Interbank Offered Rate for U.S. dollar deposits).

"*Three-Month LIBOR*" means, with respect to any Dividend Period, the offered rate (expressed as a percentage per annum) for deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period that appears on Telerate Page 3750 as of 11:00 a.m. (London time) on the second London Banking Day immediately preceding the first day of that Dividend Period (the "*Dividend Determination Date*"). If such rate does not appear on Telerate Page 3750, Three-Month LIBOR will be determined on the basis of the rates at which deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than $1,000,000 are offered to prime banks in the London interbank market by four major banks in the London interbank market selected by the Corporation, at approximately 11:00 a.m., London time on the second London Banking Day immediately preceding the first day of that Dividend Period. The Calculation Agent will request the principal London office of each of such banks to provide a quotation of its rate. If at least two such quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of such

quotations. If fewer than two quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of the rates quoted by three major banks in New York City selected by the Corporation, at approximately 11:00 a.m., New York City time, on the first day of that Dividend Period for loans in U.S. dollars to leading European banks for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than $1,000,000. However, if fewer than three banks selected by the Corporation to provide quotations are not quoting as described above, Three-Month LIBOR for that Dividend Period will be the same as Three-Month LIBOR as determined for the previous Dividend Period, or in the case of the first Dividend Period, the most recent rate that could have been determined in accordance with the first sentence of this paragraph had Series G Preferred Stock been outstanding. The Calculation Agent's establishment of Three-Month LIBOR and calculation of the amount of dividends for each Dividend Period will be on file at the principal offices of the Corporation, will be made available to any holder of Series G Preferred Stock upon request and will be final and binding in the absence of manifest error.

Section 4. Dividends.

(a) Rate. Holders of Series G Preferred Stock shall be entitled to receive, if, as and when declared by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation, but only out of assets legally available therefor, non-cumulative cash dividends on the liquidation preference of $100,000 per share of Series G Preferred Stock, and no more, payable as follows: (i) if the Series G Preferred Stock is issued prior to March 15, 2012, semi-annually in arrears on each March 15 and September 15 through March 15, 2012; and (ii) from and including the later of March 15, 2012 and the date of issuance, quarterly in arrears on each March 15, June 15, September 15 and December 15; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day, unless that day falls in the next calendar year, in which case payment of such dividend will occur on the immediately preceding Business Day (in either case, without any interest or other payment in respect of such delay) (each such day on which dividends are payable a "*Dividend Payment Date*"). The period from and including the date of issuance of the Series G Preferred Stock or any Dividend Payment Date to but excluding the next Dividend Payment Date is a "*Dividend Period.*" Dividends on each share of Series G Preferred Stock will accrue on the liquidation preference of $100,000 per share for each Dividend Period (1) from the date of issuance to, but excluding, the Dividend Payment Date in March 2012 (if issued prior to that date) at a rate per annum equal to 5.63% and (2) thereafter at a rate per annum equal to the greater of (x) Three-Month LIBOR plus a spread of 0.40% and (y) 4.00%. The record date for payment of dividends on the Series G Preferred Stock shall be the last Business Day of the calendar month immediately preceding the month during which the Dividend Payment Date falls. The amount of dividends payable shall be computed on the basis of a 360-day year and the actual number of days elapsed in a Dividend Period.

(b) Non-Cumulative Dividends. Dividends on shares of Series G Preferred Stock shall be non-cumulative. To the extent that any dividends payable on the shares of Series G Preferred Stock on any Dividend Payment Date are not declared and paid, in full or otherwise, on such Dividend Payment Date, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable and the Corporation shall have no obligation to pay, and the holders of

Series G Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series G Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

(c) Priority of Dividends. So long as any share of Series G Preferred Stock remains outstanding, (i) no dividend shall be declared or paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or a*pro rata* portion, of the Series G Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case unless full dividends on all outstanding shares of Series G Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation's Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series G Preferred Stock remain outstanding, no dividends shall be declared or paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series G Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series G Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series G Preferred Stock and the holders of any Parity Stock. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series G Preferred Stock and the aggregate of the current and accrued dividends due on the Parity Stock. No interest will be payable in respect of any dividend payment on shares of Series G Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may be declared and paid on any Junior Stock from time to time out of any assets legally available therefor, and the shares of Series G Preferred Stock shall not be entitled to participate in any such dividend.

Section 5. Liquidation Rights.

(a) Liquidation. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series G Preferred Stock shall be entitled, out of assets legally available therefor, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series G Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of $100,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series G Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

(b) Partial Payment. If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series G Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series G Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences plus any dividends which have been declared but not yet paid of Series G Preferred Stock and all such Parity Stock.

(c) Residual Distributions. If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series G Preferred Stock and all holders of any Parity Stock, then the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

(d) Merger, Consolidation and Sale of Assets Not Liquidation. For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

Section 6. Redemption.

(a) Optional Redemption. The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors of the Corporation, may redeem out of funds legally available therefor, in whole or in part, the shares of Series G Preferred Stock at the time outstanding, at any time on or after the later of March 15, 2012 and the date of original issuance of the Series G Preferred Stock, upon notice given as provided in Section 6(b) below. The redemption price for shares of Series G Preferred Stock shall be $100,000 per share plus dividends that have been declared but not paid plus accrued and unpaid dividends for the then-current Dividend Period to the redemption date.

(b) Notice of Redemption. Notice of every redemption of shares of Series G Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 15 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series G Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series G Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series G Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series G Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

(c) Partial Redemption. In case of any redemption of only part of the shares of Series G Preferred Stock at the time outstanding, the shares of Series G Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series G Preferred Stock in proportion to the number of Series G Preferred Stock held by such holders or by lot or in such other manner as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine to be fair and equitable. Subject to the provisions of this Section 6, the Board of Directors of the Corporation, the Committee or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series G Preferred Stock shall be redeemed from time to time.

(d) Effectiveness of Redemption. If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other assets, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors (the "*Depositary Company*") in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue after such redemption date, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depositary Company any

interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

Section 7. Voting Rights. The holders of the Series G Preferred Stock will have no voting rights and will not be entitled to elect any directors, except as expressly provided by law.

Section 8. Preemption and Conversion. The holders of Series G Preferred Stock shall not have any rights of preemption or rights to convert such Series G Preferred Stock into shares of any other class of capital stock of the Corporation.

Section 9. Rank. Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors of the Corporation, the Committee or any authorized committee of the Board of Directors of the Corporation, without the vote of the holders of the Series G Preferred Stock, may authorize and issue additional shares of Junior Stock, Parity Stock or any class or series of Senior Stock or any other securities ranking senior to the Series G Preferred Stock as to dividends and the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

Section 10. Repurchase. Subject to the limitations imposed herein, the Corporation may purchase and sell Series G Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

Section 11. Unissued or Reacquired Shares. Shares of Series G Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

Section 12. No Sinking Fund. Shares of Series G Preferred Stock are not subject to the operation of a sinking fund.

THIS NOTE 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 NOTE IS NOT EXCHANGEABLE FOR NOTES 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 NOTE (OTHER THAN A TRANSFER OF THIS NOTE 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.

Unless this Note is presented by an authorized representative of The Depository Trust Company, a New York corporation (55 Water Street, New York, New York) ("DTC"), to the Corporation or its agent for registration of transfer, exchange or payment, and this Note is registered in the name of Cede & Co. or such other name as requested by an authorized representative of DTC, and unless any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.

THIS NOTE IS NOT A SAVINGS ACCOUNT OR A DEPOSIT, IS NOT AN OBLIGATION OF OR GUARANTEED BY ANY BANKING OR NONBANKING AFFILIATE OF BANK OF AMERICA CORPORATION, AND IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENTAL AGENCY.

REGISTERED

$500,000,000

NUMBER R-1

CUSIP: 060505CY8
ISIN: US060505CY85

ORIGINAL ISSUE DATE: February 15, 2007
MATURITY DATE: February 12, 2010
BASE RATE: LIBOR Telerate Page 3750
INDEX MATURITY: 90 Days
SPREAD: From Original Issue Date through August 17, 2008 = 0.01%
From August 18, 2008 through the Maturity Date or earlier redemption date = 0.12%
INTEREST PAYMENT DATES: February 18, May 18, August 18 and November 18
INTEREST RESET DATES: February 18, May 18, August 18 and November 18
INTEREST DETERMINATION DATES: Two London banking days prior to each Interest Payment Date
RECORD DATES: One business day prior to each Interest Payment Date for book-entry only notes;
February 1, May 1, August 1 and November 1 of each year for notes not held in book-entry only form
REDEMPTION DATES: August 18, 2008 and each Interest Payment Date thereafter
INITIAL REDEMPTION PERCENTAGE: 100%
CALCULATION AGENT: The Bank of New York Trust Company, N.A.

BANK OF AMERICA CORPORATION
FLOATING RATE CALLABLE
SENIOR NOTES, DUE FEBRUARY 2010

BANK OF AMERICA CORPORATION, a Delaware corporation (herein called the "Corporation," which term includes any successor corporation under the Indenture referred to on the reverse hereof), for value received, hereby promises to pay to CEDE & CO., or registered assigns, the principal sum of FIVE HUNDRED MILLION DOLLARS ($500,000,000) on February 12, 2010 (except to the extent redeemed or repaid prior to that date). The Corporation will pay interest on such principal amount for each quarterly interest period from the Original Issue Date through August 17, 2008 at a floating rate equal to Three-Month LIBOR (as defined below) plus the Spread of 0.01%. The Corporation will pay interest on such principal amount for each quarterly interest period from August 18, 2008 to the Maturity Date or earlier redemption date at a floating rate equal to Three-Month LIBOR plus the Spread of 0.12%. Interest shall be payable commencing on the first Interest Payment Date succeeding the Original Issue Date and

on each Interest Payment Date thereafter and on the Maturity Date. If the Corporation shall default in the payment of interest due on an Interest Payment Date, then this Note shall bear interest from the next preceding Interest Payment Date for which interest has been paid, or, if no interest has been paid on the Notes, from the Original Issue Date.

Interest on this Note will accrue from the Original Issue Date until the principal amount is paid or duly provided for and will be computed as described in this Note. Interest payable on this Note on any Interest Payment Date or on the Maturity Date will include interest accrued from, and including, the preceding Interest Payment Date for which interest has been paid or duly provided for (or from, and including, the Original Issue Date if no interest has been paid or duly provided for, as the case may be) to, but excluding, such Interest Payment Date or Maturity Date, as the case may be. If any Interest Payment Date falls on a day that is not a Business Day (as defined below), such Interest Payment Date shall be the following day that is a Business Day (and no interest will accrue as a result of that postponement), except if such next Business Day falls in the next calendar month, such Interest Payment Date will be the preceding day that is a Business Day; and if the Maturity Date falls on a day that is not a Business Day, principal or interest payable with respect to such Maturity Date will be paid on the next Business Day with the same force and effect as if made on such Maturity Date, and no additional interest shall accrue for the period from and after such Maturity Date. Interest will be calculated using the actual number of days in an interest period and a 360-day year.

An interest period is the period beginning on the Original Issue Date or an Interest Payment Date and ending on the date immediately preceding the next following Interest Payment Date or Maturity Date, as the case may be. The interest rate on this Note in effect for each interest period will be determined by the Calculation Agent using Three-Month LIBOR on the Interest Determination Date for that interest period. The Calculation Agent will add Three-Month LIBOR as determined on the Interest Determination Date to the applicable Spread to calculate the interest rate in effect for the applicable interest period.

"Three-Month LIBOR" means the London interbank offered rate for deposits of at least $1,000,000 in U.S. dollars having an index maturity of three months, as that rate appears on Telerate page 3750 at approximately 11:00 a.m., London time, on the Interest Determination Date. A "London banking day" is any day on which dealings in deposits in U.S. dollars are transacted in the London interbank market.

If no offered rate appears on Telerate page 3750 on an Interest Determination Date at approximately 11:00 a.m., London time, then the Calculation Agent (after consultation with the Corporation) will select four major banks in the London interbank market and will request each of their principal London offices to provide a quotation of the rate at which three-month deposits in U.S. dollars in amounts of at least $1,000,000 are offered by it to prime banks in the London interbank market, on that date and at that time, that is representative of single transactions at that time. If at least two quotations are provided, Three-Month LIBOR will be the arithmetic average of the quotations provided. Otherwise, the Calculation Agent will select three major banks in New York City and shall request each of them to provide a quotation of the rate offered by it at approximately 11:00 a.m., New York City time, on the Interest Determination Date for loans in U.S. dollars to leading European banks having an index maturity of three months for the applicable interest period in an amount of at least $1,000,000 that is representative of single

transactions at that time. If three quotations are provided, Three-Month LIBOR will be the arithmetic average of the quotations provided. Otherwise, Three-Month LIBOR for the next interest period will be equal to Three-Month LIBOR in effect for the then current interest period.

The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will be paid to the person in whose name this Note (or one or more predecessor Notes evidencing all or a portion of the same debt as this Note) is registered at the close of business on the Record Date for such Interest Payment Date, whether or not a Business Day. "Business Day" means any weekday that is not a legal holiday in New York, New York or Charlotte, North Carolina and is not a day on which banking institutions in those cities are authorized or required by law or regulation to be closed and that also is a London banking day.

The principal of and interest on this Note are payable in immediately available funds in such coin or currency of the United States as at the time of payment is legal tender for payment of public and private debts, at the office or agency of the Corporation in New York or such other places that the Corporation shall designate as provided in such Indenture; provided, however, that interest may be paid, at the option of the Corporation, by check mailed to the person entitled thereto at his address last appearing on the registry books of the Corporation relating to the Notes. Notwithstanding the preceding sentence, payments of principal of and interest payable on the Maturity Date will be made by wire transfer of immediately available funds to a designated account maintained in the United States upon (i) receipt of written notice by the Issuing and Paying Agent (as described on the reverse hereof) from the registered holder hereof not less than one Business Day prior to the due date of such principal and (ii) presentation of this Note to The Bank of New York Trust Company, N.A., as Issuing and Paying Agent, at its corporate trust offices located at 101 Barclay Street, New York, New York 10286. Any interest not punctually paid or duly provided for shall be payable as provided in such Indenture.

Reference is made to the further provisions of this Note set forth on the reverse hereof, which shall have the same effect as though fully set forth at this place.

Unless the certificate of authentication hereon has been executed by the Trustee or by an authenticating agent on behalf of the Trustee by manual signature, this Note shall not be entitled to any benefit under such Indenture or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Corporation has caused this Note to be duly executed, by manual or facsimile signature, under its corporate seal or a facsimile thereof.

BANK OF AMERICA CORPORATION

By: _____
Title: Senior Vice President

[SEAL]

ATTEST:

By: _____
Assistant Secretary

CERTIFICATE OF AUTHENTICATION

This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

Dated: February 15, 2007

THE BANK OF NEW YORK TRUST
COMPANY, N.A., as Trustee

By: _____
Authorized Signatory

[Reverse of Note]

BANK OF AMERICA CORPORATION
FLOATING RATE CALLABLE
SENIOR NOTES, DUE FEBRUARY 2010

This Note is one of a duly authorized series of Securities of the Corporation unlimited in aggregate principal amount issued and to be issued under an Indenture dated January 1, 1995 (herein called the "Indenture"), between the Corporation (successor to NationsBank Corporation) and The Bank of New York Trust Company, N.A., as Trustee (as successor trustee to The Bank of New York, as successor in interest to U.S. Bank Trust National Association, as successor trustee to BankAmerica National Trust Company, herein called the "Trustee," which term includes any successor trustee under the Indenture), as supplemented by a First Supplemental Indenture dated September 18, 1998, a Second Supplemental Indenture dated May 7, 2001, a Third Supplemental Indenture dated July 28, 2004 and a Fourth Supplemental Indenture dated April 28, 2006, to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights thereunder of the Corporation, the Trustee and the holders of the Notes (as defined herein), and the terms upon which the Notes are, and are to be, authenticated and delivered. The series of which this Note is a part also is designated as the Corporation's Floating Rate Callable Senior Notes, due February 2010 (herein called the "Notes"), initially in the principal amount of $2,000,000,000. The amount of Notes of this series may be increased by the Corporation in the future. The Trustee initially shall act as Security Registrar and Authenticating and Issuing and Paying Agent in connection with the Notes.

The Notes are not subject to any sinking fund.

The provisions of Section 14.02 and Section 14.03 of the Indenture do not apply the Notes.

Subject to the provisions of Article III of the Indenture, all, but not less than all, of the Notes of this series may be redeemed at the option of the Corporation on August 18, 2008 and on any subsequent Interest Payment Date, by giving not less than 15 nor more than 60 calendar days' notice to the Trustee and the holders of the Notes.

Prior to the publication of any notice of redemption, the Corporation shall deliver to the Trustee a certificate signed by the Chief Financial Officer or a Senior Vice President of the Corporation stating that the Corporation is entitled to effect such redemption and setting forth a statement of facts showing the conditions precedent to the right to redeem.

Notes so redeemed will be redeemed at 100% of their principal amount together with interest accrued up to, but excluding, the date of redemption.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Note may be registered on the Security Register or registry books of the Corporation relating to the Notes, upon surrender of this Note for registration of transfer at the office or agency of the Corporation designated by it pursuant to the Indenture, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Corporation and

the Trustee or the Security Registrar duly executed by the registered holder hereof or his attorney duly authorized in writing, and thereupon one or more new Notes, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

No service charge will be made for any such registration of transfer or exchange, but the Corporation may require payment of a sum sufficient to cover any tax, assessment or other governmental charge payable in connection therewith.

Prior to due presentment for registration of transfer of this Note, the Corporation, the Trustee, the Issuing and Paying Agent, and any agent of the Corporation may treat the person in whose name this Note is registered as the absolute owner hereof for the purpose of receiving payment as herein provided and for all other purposes, whether or not this Note be overdue, and neither the Corporation, the Trustee, the Issuing and Paying Agent, nor any such agent of the Corporation shall be affected by notice to the contrary.

The Notes are issuable only as registered notes without coupons in denominations of $5,000 and whole multiples of $5,000. As provided in the Indenture, and subject to certain limitations therein set forth, the Notes are exchangeable for a like aggregate principal amount of notes of different authorized denominations, as requested by the holder surrendering the same.

If an Event of Default (defined in the Indenture as (i) the Corporation's failure to pay the principal of (or premium, if any, on) any Notes when due, or to pay interest on the Notes within 30 days after the same becomes due, (ii) the Corporation's breach of its other covenants contained in this Note or in the Indenture, which breach is not cured within 90 days after written notice by the Trustee or the holders of at least 25% in outstanding principal amount of all Securities issued under the Indenture and affected thereby, and (iii) certain events involving the bankruptcy, insolvency or liquidation of the Corporation) shall occur with respect to the Notes, the principal of all the Notes may be declared due and payable in the manner and with the effect provided in the Indenture.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Corporation and the rights of the holders of the Notes under the Indenture at any time by the Corporation with the consent of the holders of not less than 66 2/3% in aggregate principal amount of the Notes then outstanding and all other Securities then outstanding under the Indenture and affected by such amendment and modification. The Indenture also contains provisions permitting the holders of a majority in aggregate principal amount of the Notes then outstanding and all other Securities then outstanding under the Indenture and affected thereby, on behalf of the holders of all such Securities, to waive compliance by the Corporation with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the holder of this Note shall be conclusive and binding upon such holder and upon all future holders of this Note and of any Note issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof whether or not notation of such consent or waiver is made upon this Note.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Corporation, which is absolute and unconditional, to pay the principal of and interest on this Note at the times, place, and rate, and in the coin or currency, herein prescribed.

No recourse shall be had for the payment of the principal of or the interest on this Note, or for any claim based hereon, or otherwise in respect hereof, or based on or in respect of the Indenture or any indenture supplemental thereto, against any incorporator, stockholder, officer, or director, as such, past, present, or future, of the Corporation or any predecessor or successor corporation, whether by virtue of any constitution, statute, or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for issue hereof, expressly waived and released.

The Notes of this series shall be dated the date of their authentication.

All terms used in this Note which are not defined herein, but are defined in the Indenture shall have the meanings assigned to them in the Indenture.

If the Notes are to be issued and outstanding pursuant to a book-entry system, the following paragraph is applicable: The Notes are being issued by means of a book-entry system with no physical distribution of certificates to be made except as provided in the Indenture. The book-entry system maintained by DTC will evidence ownership of the Notes, with transfers of ownership effected on the records of DTC and its participants pursuant to rules and procedures established by DTC and its participants. The Corporation will recognize Cede & Co., as nominee of DTC, while the registered holder of the Notes, as the owner of the Notes for all purposes, including payment of principal, premium, if any, and interest, notices, and voting. Transfers of the principal, premium, if any, and interest to beneficial owners of the Notes by participants of DTC will be the responsibility of such participants and other nominees of such beneficial owners. So long as the book-entry system is in effect, the selection of any Notes to be redeemed will be determined by DTC pursuant to rules and procedures established by DTC and its participants. The Corporation will not be responsible or liable of such transfers or payments or for maintaining, supervising, or reviewing the records maintained by DTC, its participants, or persons acting through such participants.

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of the within Note shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM—	as tenants in common
TEN ENT—	as tenants by the entireties
JT TEN—	as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT— _____ (Cust) Custodian _____ (Minor)
Under Uniform Gifts to Minors Act
_____ (State)

Additional abbreviations may also be used though not in the above list.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto

[PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS
INCLUDING ZIP CODE, OF ASSIGNEE]

_____

_____

_____

Please Insert Social Security or Other
Identifying Number of Assignee: _____

the within Note and all rights thereunder, hereby irrevocably constituting and appointing _____ Attorney to transfer said Note on the books of the Corporation, with full power of substitution in the premises.

Dated: _____ _____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Note in every particular, without alteration or enlargement or any change whatever and must be guaranteed.

Exhibit 4.4

Execution Version

Amended and Restated Declaration of Trust

among

Bank of America Corporation,
as Sponsor,

The Bank of New York,
as Property Trustee,

The Bank of New York (Delaware),
as Delaware Trustee,

the Regular Trustees (as named herein),

and the several Holders of the Trust Securities

Dated as of February 16, 2007

of

BAC Capital Trust XIII

Bank of America Corporation
Certain Sections of this Declaration relating to Section 310 through 318, inclusive, of the
Trust Indenture Act of 1939:

Trust Indenture Act Section	Declaration Section
§ 310(a)(1)	8.7
(a)(2)	8.7
(a)(3)	8.9
(a)(4)	2.7(a)(ii)
(b)	8.8
(c)	Not applicable
§ 311(a)	8.13
(b)	8.13
§ 312(a)	5.7
(b)	5.7
(c)	5.7
§ 313(a)	8.15(a), 8.15(b)
(b)	8.15(b)
(c)	12.8
(d)	8.15(c)
§ 314(a)	8.16
(b)	Not applicable
(c)(1)	8.17
(c)(2)	8.17
(c)(3)	Not applicable
(d)	Not applicable
(e)	1.1, 8.17
§ 315(a)	8.1(a), 8.3(a)
(b)	8.2, 12.8
(c)	8.1(d)
(d)	8.1(e), 8.3
(e)	Not applicable
§ 316(a)	Not applicable
(a)(1)(A)	Not applicable
(a)(1)(B)	5.16(e)
(a)(2)	Not applicable
(b)	5.16
(c)	6.8
§ 317(a)(1)	Not applicable
(a)(2)	8.14
(b)	5.9
§ 318(a)	12.10
(b)	12.10

Note: This reconciliation and tie shall not, for any purpose be deemed to be part of the Declaration.

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EXHIBITS:

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AMENDED AND RESTATED
DECLARATION OF TRUST
OF
BAC CAPITAL TRUST XIII

THIS AMENDED AND RESTATED DECLARATION OF TRUST ("*Declaration*") dated and effective as of February 16, 2007 by and among (i) Bank of America Corporation, a Delaware corporation (including any successors or assigns, the "*Sponsor*" or "*Corporation*"), (ii) The Bank of New York , a New York banking corporation, as property trustee (in such capacity, the "*Property Trustee*"), (iii) The Bank of New York (Delaware), a Delaware banking corporation, as Delaware trustee (in such capacity, the "*Delaware Trustee*"), (iv) James T. Houghton, Richard L. Nichols, Jr., and Ann J. Travis (and their respective successors), each an individual whose addresses are c/o Bank of America Corporation, NC1-007-07-06, 100 North Tryon Street, Charlotte, North Carolina, 28255, Attention: Corporate Treasury (each, a "*Regular Trustee*," and collectively, the "*Regular Trustees*") (the Property Trustee, the Delaware Trustee, and the Regular Trustees being referred to collectively as the "*Trustees*"), and (v) the holders, from time to time, of undivided beneficial interests in the assets of the Trust (as defined in the following paragraph) to be issued pursuant to this Declaration;

WHEREAS, the Delaware Trustee, the Sponsor and Karen A. Gosnell and James T. Houghton, as initial Regular Trustees, established BAC CAPITAL TRUST XIII (the "*Trust*"), a trust under the Delaware Statutory Trust Act, pursuant to a Declaration of Trust dated as of May 3, 2006 (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 the Notes;

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

WHEREAS, the Corporation and the Trustees desire to amend and restate the Declaration in its entirety as set forth herein to provide for, among other things, (i) the issuance of the Common Securities by the Trust to the Corporation, (ii) the issuance of Preferred HITS by the Trust and their offer and sale in a public offering pursuant to the Underwriting Agreement, (iii) the issuance of Treasury HITS and Corporate HITS in Exchange for Preferred HITS as provided in Section 5.13, (iv) the acquisition by the Trust from the Corporation of all of the right, title and interest in the Notes, and (v) the entering into by the Trust with the Corporation of the Stock Purchase Contract Agreement and, pursuant to the Stock Purchase Contracts evidenced by that agreement, the purchase by the Trust of shares of Preferred Stock on the Stock Purchase Date;

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 statutory trust under the Delaware Statutory Trust Act and that this Declaration constitute the governing instrument of such statutory trust, the Trustees declare that all assets contributed to the Trust will be held in trust for the benefit of the holders, from time to time, of the securities representing undivided beneficial interests in the assets of the Trust issued hereunder, subject to the provisions of this Declaration.

ARTICLE I

DEFINED TERMS

Section 1.1 *Definitions*.

For all purposes of this Declaration, except as otherwise expressly provided or unless the context otherwise requires:

(i) The terms defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular.

(ii) All other terms used herein that are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein.

(iii) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles, and the term "generally accepted accounting principles" with respect to any computation required or permitted hereunder shall mean such accounting principles that are generally accepted at the date or time of such computation; *provided* that when two or more principles are so generally accepted, it shall mean that set of principles consistent with those in use by the Corporation.

(iv) The words "hereby", "hereof" and "hereunder" and other words of similar import refer to this Declaration as a whole and not to any particular Article, Section or other subdivision.

"*Act*" has the meaning specified in Section 6.9.

"*Actual/360 Basis*" means, for purposes of calculating the rate of Distributions, such rate calculated on the basis of a 360-day year and the number of days actually elapsed.

"*Additional Distribution Date*" means each March 15, June 15, September 15 and December 15 commencing on the later of the first such date on which Treasury HITS are Outstanding and June 15, 2007 (or, if any such day is not a Business Day, the next succeeding Business Day).

"*Affected Class(es)*" means, (i) if a proposed action or inaction or Event of Default or other relevant circumstance relates solely and specifically to Trust Property, each Class for which such Trust Property is a Corresponding Asset, (ii) if a proposed action or inaction or Event of Default or other relevant circumstance does not relate specifically and solely to Trust Property, then each Class that could reasonably be expected to be affected by the action proposed or inaction or Event of Default, and (iii) for purposes of Section 5.16 at any time, the Classes of HITS for which Notes at such time are Corresponding Assets (that is, (A) for purposes of Sections 5.16(b) and 5.16(c), until the Remarketing Settlement Date, the Preferred HITS and the Corporate HITS and, thereafter, the Corporate HITS, (B) for purposes of Section 5.16(d), the Preferred HITS and the Treasury HITS, and (C) for purposes of Section 5.16(e), (I) if the Event of Default is of the type referred to in clause (a) of the definition of that term, the Preferred HITS and the Corporate HITS until the Remarketing Settlement Date and the Corporate HITS thereafter, (II) if the Event of Default is of the type described in paragraph (b) of the definition of that term, the Preferred HITS and Treasury HITS, (III) if the Event of Default is of the type described in clause (d) of the definition of that term, the Classes of HITS that were to have been redeemed, and (IV) if the Event of Default is of the type described in any of clause (c), (e) or (f) of the definition of that term, each Class of HITS then outstanding).

"*Affiliate*" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"*Authorized Officer*" of any Person means any officer of such Person or any Person authorized by or pursuant to a resolution of the Board of Directors of such Person.

"Bank of America Deposit" has the meaning specified in the Stock Purchase Contract Agreement.

"*Bankruptcy Event*" means, with respect to any Person:

(a) the entry of a decree or order by a court having jurisdiction in the premises judging such Person a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjudication or composition of or in respect of such Person under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law, or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of such Person or of any substantial part of its property or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days; or

(b) the institution by such Person of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or similar official) of such Person or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due and its willingness to be adjudicated a bankrupt, or the taking of corporate action by such Person in furtherance of any such action.

"*Bankruptcy Laws*" has the meaning specified in Section 12.9.

"Base Indenture" means the Restated Junior Subordinated Debt Securities Indenture dated as of November 1, 2001 between the Corporation and The Bank of New York Trust Company, N.A., as successor trustee.

"*Board of Directors*" means either the board of directors of any Person or any committee of that board of directors duly authorized to act.

"*Book-Entry Transfer*" means:

(a) as to HITS represented by Book-Entry HITS Certificates and as to Notes represented by global certificates that settle and clear through a Clearing Agency's system, transfer or delivery in accordance with the rules and procedures of the applicable Clearing Agency (including, in the case of DTC if it is the Clearing Agency, book-entry deliveries through DTC's Deposit/Withdrawal at Custodian DWAC system); and

(b) as to U.S. Treasury securities (including Qualifying Treasury Securities), transfer or delivery in accordance with the regulations of the United States Department of the Treasury governing book-entry treasury securities, including those currently at 12 C.F.R. Part 357.

"*Book-Entry HITS*" means HITS the ownership and transfers of which shall be made through book entries by a Clearing Agency as provided in Section 5.11.

"*Book-Entry HITS Certificate*" means a HITS Certificate evidencing ownership of Book-Entry HITS.

"*Business Day*" means a day other than a Saturday, a Sunday, or any other day on which banking institutions and trust companies in New York, New York or Charlotte, North Carolina are authorized or required by any applicable law to close.

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

"*Certificate*" means a Corporate HITS Certificate, a Preferred HITS Certificate, a Treasury HITS Certificate or a Common Securities Certificate.

"*Certificate Custodian*" means, with respect to the HITS of a Class, the Securities Registrar, as custodian with respect to the Book-Entry HITS Certificates representing the HITS of such Class, or any successor entity thereto.

"*Certificate of Designations*" means the "Certificate of Designations of Floating Rate Non-Cumulative Preferred Stock, Series F of Bank of America Corporation", dated February 15, 2007, setting forth the resolutions of the Corporation's Board of Directors fixing the designations, voting powers, preferences and relative, participating and other special rights, and qualifications, limitations and restrictions thereof of the shares of the Preferred Stock as a new series of the Corporation's preferred stock.

"*Certificate of Trust*" has the meaning specified in the recitals hereof, as amended from time to time.

"*Class*" means each of the Preferred HITS, the Treasury HITS, the Corporate HITS and the Common Securities, each as a class of beneficial interests in the Trust.

"*Clearing Agency*" means an organization registered as a "clearing agency" pursuant to Section 17A of the Exchange Act. DTC will be the initial Clearing Agency.

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

"*Closing Date*" means February 16, 2007, which date also is the date of execution and delivery of this Declaration.

"*Collateral Account*" has the meaning specified in the Collateral Agreement.

"*Collateral Agent*" means The Bank of New York Trust Company, N.A., as Collateral Agent under the Collateral Agreement until a successor Collateral Agent shall have been appointed and qualified pursuant to the applicable provisions of the Collateral Agreement, and thereafter "Collateral Agent" shall mean the Person who is then the Collateral Agent thereunder.

"*Collateral Agreement*" means the Collateral Agreement, dated as of the date hereof, among the Corporation, the Collateral Agent, the Custodial Agent, the Securities Intermediary, the Trust (acting through the Property Trustee) and the Securities Registrar for the HITS, as amended from time to time.

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

"*Common Securities Certificate*" means a certificate evidencing ownership of Common Securities, substantially in the form attached as Exhibit C.

"*Common Security*" means a beneficial interest in the Trust, having a Liquidation Amount of $1,000 and having the rights provided therefor in this Declaration, including the right to receive Distributions and a Liquidation Distribution as provided herein.

"*Contingent Disposition Election*" has the meaning specified in Section 5.14(a)(ii).

"*Contingent Exchange Election*" has the meaning specified in Section 5.14(a)(i).

"*Contract Payments*" has the meaning specified in the Stock Purchase Contract Agreement.

"*Corporate HITS*" means a beneficial interest in the Trust, having a Liquidation Amount of $1,000 per Corporate HITS and having the rights provided for Corporate HITS in this Declaration, including the right to receive Distributions and a Liquidation Distribution as provided herein.

"*Corporate HITS Certificate*" means a certificate evidencing ownership of Corporate HITS, substantially in the form attached as Exhibit B.

"*Corporate HITS Distribution Date*" means (i) each March 15, June 15, September 15 and December 15, commencing on the later of the first such date on which Corporate HITS are Outstanding and June 15, 2007 and continuing through and including the last such date to occur prior to the Remarketing Settlement Date for a Successful Remarketing, and (ii) thereafter for so long as Corporate HITS remain outstanding, each day that is an interest payment date for the Notes.

"*Corporate HITS Distribution Rate*" means (i) from the Closing Date to but not including the Remarketing Settlement Date for a Successful Remarketing, or, in the event of a Failed Remarketing, the Stock Purchase Date, Three-Month LIBOR plus 0.25% per annum (calculated on an Actual/360 Basis), and (ii) thereafter for so long as Corporate HITS remain outstanding, the rate per annum corresponding to interest payments by the Corporation on the Notes.

"*Corporate HITS Redemption Date*" means, with respect to any Corporate HITS to be redeemed, the date fixed for such redemption by or pursuant to this Declaration; *provided* that (i) each Note Redemption Date shall be a Corporate HITS Redemption Date for a Like Amount of Corporate HITS and (ii) if a Successful Remarketing occurs, the first Business Day after the Stock Purchase Date shall be a Corporate HITS Redemption Date for a redemption in kind pursuant to Section 4.2(c).

"*Corporate HITS Redemption Price*" means, with respect to a redemption of Corporate HITS for a Redemption Price payable in cash pursuant to Section 4.2(b) and the related Corporate HITS Redemption Date, the redemption price for a Like Amount of Notes redeemed on such date in accordance with the Indenture.

"*Corresponding Assets*" means, with respect to each $1,000 Liquidation Amount of Trust Securities:

(a) in the case of Preferred HITS and Common Securities, (i) from the Time of Delivery to but not including the Remarketing Settlement Date for a Successful Remarketing, $1,000 principal amount of Pledged Notes and a 1/100th interest in a Stock Purchase Contract, (ii) from and including the Remarketing Settlement Date for a Successful Remarketing to but not including the Stock Purchase Date, the Bank of America Deposit made with the net proceeds of each $1,000 principal amount of Pledged Notes sold in such Successful Remarketing on such Remarketing Settlement Date and a 1/100th interest in a Stock Purchase Contract, and (iii) from and including the Stock Purchase Date and thereafter for so long as Preferred HITS are outstanding, 1/100th of a share of Preferred Stock;

(b) in the case of Treasury HITS, (i) from the date of issuance for each Treasury HITS to but not including the Stock Purchase Date, $1,000 principal amount of Pledged Treasury Securities and a 1/100th interest in a Stock Purchase Contract, and (ii) from and including the Stock Purchase Date and thereafter for so long as Treasury HITS are outstanding, 1/100th of a share of Preferred Stock, subject to Section 4.8; and

(c) in the case of Corporate HITS, from the date of issuance for each Corporate HITS, $1,000 principal amount of Notes, subject to Section 5.14.

"Corporate Trust Office" means when used with respect to each of the Property Trustee and the Note Trustee, the principal office which at any particular time such entity's corporate trust business shall be principally administered, which office at the date hereof is located at, (i) with respect to the Property Trustee, The Bank of New York, 101 Barclay Street, 8 West, New York, New York 10286, facsimile: (904) 645-1921, Attention: Corporate Trust Administration and (ii) with respect to the Note Trustee, the Bank of New York Trust Company, N.A., 10161 Centurion Parkway, 2nd Floor, Jacksonville, Florida 32256, facsimile: (904) 645-1921, Attention: Corporate Trust Administration.

"*Custodial Agent*" means The Bank of New York Trust Company, N.A., as Custodial Agent under the Collateral Agreement until a successor Custodial Agent shall have become such pursuant to the applicable provisions of the Collateral Agreement, and thereafter "Custodial Agent" shall mean the Person who is then the Custodial Agent thereunder.

"*Custody Account*" has the meaning specified in the Collateral Agreement.

"*Declaration*" means this Amended and Restated Declaration, as the same may be modified, amended or supplemented in accordance with the applicable provisions hereof, including (i) all exhibits, and (ii) for all purposes of this Declaration and any such modification, amendment or supplement, the provisions of the Trust Indenture Act that are deemed to be a part of and govern this Declaration and any such modification, amendment or supplement, respectively.

"*Deferred Contract Payment Amount*" means, at any time for each $100,000 stated amount of Stock Purchase Contracts, the amount of the Contract Payments accrued on such stated amount that has been deferred and not paid by reason of the Sponsor's exercise of its right to defer payment of Contract Payments pursuant to Section 2.7 of the Stock Purchase Contract Agreement, together with interest accrued on such amount in accordance with the terms of the Stock Purchase Contract Agreement.

"*Deferred Note Interest Amount*" means, at any time for each $1,000 principal amount of Notes, the amount of interest accrued on such principal amount that has been deferred and not paid by reason of the Corporation's exercise of its right to defer payment of interest pursuant to Section 2.13 of the Base Indenture or Section 2.7 of the Thirteenth Supplemental Indenture, together with interest accrued on such amount in accordance with the terms of the Indenture and the Thirteenth Supplemental Indenture.

"*Definitive HITS Certificates*" means either or both (as the context requires) of (i) HITS Certificates issued as Book-Entry HITS Certificates as provided in Section 5.11, and (ii) HITS Certificates issued in certificated, fully registered form as provided in Sections 5.11(d) through 5.11(f) or Section 5.15.

"*Delaware Statutory Trust Act*" means Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. ss. 3801*et seq*., as it may be amended from time to time.

"*Delaware Trustee*" means the Person identified as the "Delaware Trustee" in the preamble to this Declaration, solely in its capacity as Delaware Trustee of the Trust and not in its individual capacity, or its successor in interest in such capacity, or any successor Delaware trustee appointed as herein provided.

"*Direct Action*" has the meaning specified in Section 5.16(c) and Section 5.16(d).

"*Distribution Date*" means an Additional Distribution Date, a Corporate HITS Distribution Date or a Regular Distribution Date.

"*Distribution Period*" means:

(i) with respect to Preferred HITS, Treasury HITS and Common Securities, each period of time beginning on a Regular Distribution Date (or the Closing Date in the case of the Distribution Period ending in June 2007) and continuing to but not including the next succeeding Regular Distribution Date for such Class; and

(ii) with respect to Corporate HITS, each period of time beginning on a Corporate HITS Distribution Date (or the Closing Date in the case of the Distribution Period ending in June 2007) and continuing to but not including the next succeeding Corporate HITS Distribution Date.

"*Distributions*" means amounts payable in respect of the Trust Securities as provided in Section 4.1.

"*Dividend Payment Date*" has the meaning specified in the Certificate of Designations.

"*DTC*" means The Depository Trust Company.

"*Early Dissolution Event*" has the meaning specified in Section 9.2.

"*Early Settlement Event*" has the meaning specified in the Thirteenth Supplemental Indenture.

"*Event of Default*" means any one of the following events (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) the occurrence of a Note Event of Default; or

(b) the occurrence of a Preferred Stock Default; or

(c) default by the Trust in the payment of any Distribution when it becomes due and payable, and continuation of such default for a period of 30 days; or

(d) default by the Trust in the payment of any Redemption Price of any Trust Security when it becomes due and payable; or

(e) default in the performance, or breach, in any material respect, of any covenant or warranty of the Trustees in this Declaration (other than those specified in clause (b) or (c) above) and continuation of such default or breach for a period of 90 days after there has been given, by registered or certified mail, to the Trustees and to the Sponsor by the Holders of at least 25% in aggregate Liquidation Amount of the Outstanding HITS a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(f) the occurrence of a Bankruptcy Event with respect to the Property Trustee if a successor Property Trustee has not been appointed within 90 days thereof.

"*Excess Proceeds Distribution*" means the distribution that each Holder of Treasury HITS shall receive on each Additional Distribution Date on a*pro rata* basis from the Trust of the amount by which the proceeds of the Qualifying Treasury Securities pledged by the Trust in respect of Stock Purchase Contracts maturing at least one Business Day prior to such date exceed the amount required to purchase replacement Qualifying Treasury Securities.

"*Exchange*" has the meaning specified in Section 5.13(a).

"*Exchange Act*" means the Securities Exchange Act of 1934, and any successor statute thereto, in each case as amended from time to time.

"*Exchange Period*" means the Collateral Agent's and the Securities Registrar's normal business hours on any Business Day other than (i) any day in March, June, September or December that is on or after the 1st day of such month through the 15th day of such month (or the next Business Day if the 15th day is not a Business Day) or (ii) the period from 3:00 p.m., New York City time, on the second Business Day before the first day of any Remarketing Period to but not including the Business Day after the last day of that Remarketing Period.

"*Failed Remarketing*" has the meaning specified in the Thirteenth Supplemental Indenture.

"*Federal Reserve*" means the (i) Board of Governors of the Federal Reserve System, as from time to time constituted, or if at any time after the execution of this Declaration the Federal Reserve is not

existing and performing the duties now assigned to it, then the bodies performing such duties at such time, or the Federal Reserve Bank of Richmond, or (ii) any successor Federal reserve bank (or successor body performing such duties) having primary jurisdiction over the Sponsor.

"*Final Remarketing*" has the meaning specified in the Thirteenth Supplemental Indenture.

"*Guarantee Agreements*" means collectively (i) the Guarantee Agreement executed and delivered by the Sponsor and The Bank of New York, as guarantee trustee, contemporaneously with the execution and delivery of this Declaration, for the benefit of the holders of the HITS, as amended from time to time; and (ii) the Trust Common Securities Guarantee Agreement by and among the Trust and the Sponsor, as guarantor for the benefit of the holders of the Trust Common Securities, as amended from time to time.

"*HITS*" means each of the Preferred HITS, the Treasury HITS and the Corporate HITS.

"*HITS Certificate*" means a Preferred HITS Certificate, a Treasury HITS Certificate or a Corporate HITS Certificate.

"*Holder*" means, with respect to a Trust Security, the Person in whose name the Trust Security evidenced by a Certificate is registered in the Security Register (and any such Person shall be deemed to be a beneficial owner within the meaning of the Delaware Statutory Trust Act); *provided*, *however*, that solely for the purpose of determining whether the Holders of the requisite number of HITS have voted on any matter (and not for any other purpose hereunder), if the HITS remains in the form of one or more Book-Entry HITS Certificates and if the Clearing Agency (or its nominee) that is the registered holder of such Book-Entry HITS Certificate has sent an omnibus proxy assigning voting rights to the Clearing Agency Participants to whose accounts the HITS are credited on the record date, the term "Holder" shall mean such Clearing Agency Participant acting at the direction of the Owners.

"*Indemnified Person*" has the meaning specified in Section 8.6(c).

"*Indenture*" means the Base Indenture and the Thirteenth Supplemental Indenture, taken together.

"*Investment Company Act*" means the Investment Company Act of 1940, or any successor statute thereto, in each case as amended from time to time.

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

"*Lien*" means any lien, pledge, charge, encumbrance, mortgage, deed of trust, adverse ownership interest, hypothecation, assignment, security interest or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever.

"*Like Amount*" means:

(a) with respect to a distribution of Notes to Holders of Preferred HITS, Corporate HITS or Common Securities in connection with a dissolution or liquidation of the Trust or a redemption in kind of Corporate HITS pursuant to Section 4.2(c), Notes having a principal amount equal to the Liquidation Amount of the Trust Securities of the Holder to whom such Notes are distributed;

(b) with respect to a distribution of Pledged Treasury Securities to Holders of Treasury HITS in connection with a dissolution or liquidation of the Trust, Pledged Treasury Securities having a principal amount equal to the Liquidation Amount of the Treasury HITS to whom such Pledged Treasury Securities are distributed;

(c) with respect to a distribution of Preferred Stock or fractional interests in Preferred Stock to Holders of Trust Securities in connection with a dissolution or liquidation of the Trust, Preferred Stock or a fractional interest in a share of Preferred Stock (which may be effected by the Trust through the creation of depositary shares) having a liquidation preference equal to the Liquidation Amount of the Trust Securities of the Holder to whom such shares of Preferred Stock or a fractional interest in a share of Preferred Stock (including through a depositary share) are distributed;

(d) with respect to a redemption of Preferred Stock, 1/100th of a share of Preferred Stock for each Preferred HITS or Common Security;

(e) with respect to an Exchange of Preferred HITS and Qualifying Treasury Securities for Treasury HITS and Corporate HITS pursuant to Section 5.13(b), a number of Treasury HITS and a number of Corporate HITS in each case equal to the number of Preferred HITS included in such Exchange (e.g., if 1,000 Preferred HITS are being Exchanged, the Holder will receive 1,000 Treasury HITS and 1,000 Corporate HITS in accordance with and subject to Section 5.13);

(f) with respect to an Exchange of Treasury HITS and Corporate HITS for Preferred HITS and Qualifying Treasury Securities, a number of Preferred HITS equal to the number of Treasury HITS and the number of Corporate HITS being Exchanged (e.g., if 1,000 Treasury HITS and 1,000 Corporate HITS are being Exchanged, the Holder will receive upon the Exchange 1,000 Preferred HITS together with $1,000,000 principal amount of Qualifying Treasury Securities released from the Pledge, in accordance with and subject to Section 5.13(e));

(g) with respect to Notes (including Pledged Notes as applicable) being deposited or delivered in connection with an Exchange, Notes having a principal amount equal to $1,000 for each Preferred HITS involved in the Exchange;

(h) with respect to Section 5.16(c), $1,000 principal amount of Notes for each $1,000 Liquidation Amount of HITS of each Affected Class; and

(i) with respect to Section 5.16(d), 1/100th of a Stock Purchase Contract with its stated amount of $100,000 for each $1,000 Liquidation Amount of HITS of the Affected Classes.

"*Liquidation Amount*" means the stated amount of $1,000 per Trust Security.

"*Liquidation Date*" means the date of the distribution of the assets of the Trust to Holders pursuant to Section 9.4.

"*Liquidation Distribution*" has the meaning specified in Section 9.4(d).

"*Majority in Liquidation Amount*" means as to a Class or Classes of Trust Securities, except as provided by the Trust Indenture Act, Trust Securities of such Class or Classes representing more than 50% of the aggregate Liquidation Amount of all Outstanding Trust Securities of such Class or Classes.

"*Note Event of Default*" has the meaning specified in Section 2.10 of the Thirteenth Supplemental Indenture.

"*Note Purchase Agreement*" means the Note Purchase Agreement dated as of February 12, 2007 for the purchase of the Notes by the Trust, executed and delivered by the Corporation and a Regular Trustee on behalf of the Trust.

"*Note Redemption Date*" means, with respect to any Notes to be redeemed under the Indenture, the date fixed for redemption of such Notes under the Indenture.

"*Note Redemption Price*" means, with respect to any Notes to be redeemed under the Indenture, the Redemption Price for such redemption and related Note Redemption Date determined in accordance with the Indenture.

"*Note Trustee*" means The Bank of New York Trust Company, N.A., as successor trustee to The Bank of New York, solely in its capacity as trustee pursuant to the Indenture and not in its individual capacity, or its successor in interest in such capacity, or any successor trustee appointed as provided in the Indenture.

"*Notes*" means the $700,100,000 initial aggregate principal amount of the Corporation's Remarketable Floating Rate Junior Subordinated Notes due 2043 issued pursuant to the Indenture.

"*Notice of Contingent Disposition Election*" has the meaning specified in Section 5.14(f).

"*Notice of Contingent Exchange Election*" has the meaning specified in Section 5.14(d)(i).

"*Officers' Certificate*" means, with respect to any Person, a certificate signed by any 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 by each officer signing the Officers' Certificate that such officer 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 such officer in rendering the Officers' Certificate;

(c) a statement that 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 such officer, such condition or covenant has been complied with.

"*Opinion of Counsel*" means a written opinion of counsel, who may be counsel for or an employee of the Corporation or any Affiliate of the Corporation.

"*Original Declaration*" has the meaning specified in the recitals to this Declaration.

"*Outstanding*," when used with respect to Trust Securities of a Class, means, as of the date of determination, all Trust Securities of such Class theretofore executed and delivered under this Declaration, except:

(a) Trust Securities of such Class theretofore canceled by the Property Trustee or delivered to the Property Trustee for cancellation;

(b) Trust Securities of such Class for whose payment or redemption money in the necessary amount has been theretofore deposited with the Property Trustee or any Paying Agent; *provided* that if such Trust Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Declaration; and

(c) Trust Securities of such Class that have been paid or in exchange for or in lieu of which other Trust Securities have been executed and delivered pursuant to Sections 5.4, 5.5, 5.11 and 5.13;

provided, however, that in determining whether the Holders of the requisite Liquidation Amount of the Outstanding HITS of a Class have given any request, demand, authorization, direction, notice, consent or waiver hereunder, HITS of such Class owned by the Corporation, any Trustee, or any Affiliate of the Corporation or any Trustee shall be disregarded and deemed not to be Outstanding, except that (a) in determining whether any Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only HITS of such Class that such Trustee actually knows to be so owned shall be so disregarded, and (b) the foregoing shall not apply at any time when all of the Outstanding HITS of such Class are owned by the Corporation, one or more of the Trustees, and/or any such Affiliate. HITS of a Class so owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Regular Trustees the pledgee's right so to act with respect to such HITS and that the pledgee is not the Corporation or any Affiliate of the Corporation.

"*Owner*" means each Person who is the beneficial owner of Book-Entry HITS as reflected in the records of the Clearing Agency or, if a Clearing Agency Participant is not the Owner, then as reflected in the records of a Person maintaining an account with such Clearing Agency (directly or indirectly, in accordance with the rules of such Clearing Agency).

"*Paying Agent*" means any paying agent or co-paying agent appointed pursuant to Section 5.9 and shall initially be The Bank of New York Trust Company, N.A.

"*Payment Account*" means a segregated non-interest-bearing corporate trust account maintained by the Property Trustee initially with The Bank of New York Trust Company, N.A. (in its corporate capacity and not as Paying Agent), in its trust department for the benefit of the Holders in which all amounts paid in respect of the Notes, the Stock Purchase Contracts and the Preferred Stock will be held and from which the Property Trustee, through the Paying Agent, shall make payments to the Holders in accordance with Sections 4.1 and 4.2. After the Stock Purchase Date, the Payment Account may at any time be established with any commercial bank by the Property Trustee.

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

"*Pledge*" means the pledge under the Collateral Agreement of Notes or Qualifying Treasury Securities, as the case may be.

"*Pledged Notes*" has the meaning specified in the Collateral Agreement.

"*Pledged Treasury Securities*" has the meaning specified in the Collateral Agreement.

"*Predecessor Corporate HITS Certificate*" of any particular Corporate HITS Certificate means every previous Corporate HITS Certificate evidencing all or a portion of the rights and obligations of the Corporation and the Holder under the Corporate HITS evidenced thereby; and, for the purposes of this definition, any Corporate HITS Certificate delivered under Section 5.5 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Corporate HITS Certificate shall be deemed to evidence the same rights and obligations of the Corporation and the Holder as the mutilated, destroyed, lost or stolen Corporate HITS Certificate.

"*Predecessor Certificate*" means a Predecessor Preferred HITS Certificate, a Predecessor Treasury HITS Certificate or a Predecessor Corporate HITS Certificate, as applicable.

"*Predecessor Preferred HITS Certificate*" of any particular Preferred HITS Certificate means every previous Preferred HITS Certificate evidencing all or a portion of the rights and obligations of the Corporation and the Holder under the Preferred HITS evidenced thereby; and, for the purposes of this definition, any Preferred HITS Certificate delivered under Section 5.5 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Preferred HITS Certificate shall be deemed to evidence the same rights and obligations of the Corporation and the Holder as the mutilated, destroyed, lost or stolen Preferred HITS Certificate.

"*Predecessor Treasury HITS Certificate*" of any particular Treasury HITS Certificate means every previous Treasury HITS Certificate evidencing all or a portion of the rights and obligations of the Corporation and the Holder under the Treasury HITS evidenced thereby; and, for the purposes of this definition, any Treasury HITS Certificate delivered under Section 5.5 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Treasury HITS Certificate shall be deemed to evidence the same rights and obligations of the Corporation and the Holder as the mutilated, destroyed, lost or stolen Treasury HITS Certificate.

"*Preferred HITS*" means a beneficial interest in the Trust, having a Liquidation Amount of $1,000 and having the rights provided for Preferred HITS in this Declaration, including the right to receive Distributions and a Liquidation Distribution as provided herein.

"*Preferred HITS Certificate*" means a certificate evidencing ownership of Preferred HITS, substantially in the form attached as Exhibit D.

"*Preferred HITS Distribution Rate*" means (i) from the Closing Date to but not including the later of March 15, 2012 and the Stock Purchase Date (and for each related Distribution Period), Three-Month LIBOR plus 0.40% per annum (calculated on an Actual/360 Basis) on a cumulative basis for each Regular Distribution Date to and including the Stock Purchase Date; and (ii) thereafter, for each Distribution Period and related Regular Distribution Date, the greater of (A) Three-Month LIBOR for such Distribution Period plus 0.40% and (B) 4.00% (calculated on an Actual/360 Basis) on a non-cumulative basis.[1]

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[1] Clause (i) is the sum of the per annum interest rate on the Notes and the per annum Contract Payments rate; clause (ii) is the per annum dividend rate on the Preferred Stock.

"*Preferred HITS Redemption Date*" means, with respect to any Preferred HITS to be redeemed, the date fixed for such redemption by or pursuant to this Declaration; *provided* that each Preferred Stock Redemption Date shall be a Redemption Date for a like amount of Preferred HITS.

"*Preferred HITS Redemption Price*" means, with respect to any Preferred HITS and Common Securities and the related Preferred HITS Redemption Date, the liquidation amount for a Like Amount of Preferred Stock redeemed in accordance with the Certificate of Designations plus accumulated and unpaid distributions to but excluding the Redemption Date.

"*Preferred Stock*" means the Floating Rate Non-Cumulative Preferred Stock, Series F, $100,000 liquidation preference per share, no par value, of the Sponsor.

"*Preferred Stock Default*" means the failure of the Corporation to comply in any material respect with any of its obligations (i) under the Stock Purchase Contract Agreement or (ii) as issuer of the Preferred Stock, including in the Certificate of Designations, the Corporation's certificate of incorporation, or arising under applicable law.

"*Preferred Stock Redemption Date*" means, with respect to any shares of Preferred Stock to be redeemed under the Certificate of Designations, the date fixed for redemption of such shares under the Certificate of Designations.

"*Proceeds*" has the meaning specified in the Collateral Agreement.

"*Property Trustee*" means the Person identified as the "Property Trustee" in the preamble to this Declaration, solely in its capacity as Property Trustee of the Trust and not in its individual capacity, or its successor in interest in such capacity, or any successor property trustee appointed as herein provided.

"*Prospectus*" means the prospectus supplement, dated February 12, 2007, to the prospectus dated May 5, 2006, of the Corporation and the Trust relating to the offering of the Preferred HITS.

"*Qualifying Treasury Securities*" has the meaning specified in Section 10.1.

"*Recombination Notice and Request*" has the meaning specified in Section 5.13(d)(ii).

"*Redemption Date*" means a Preferred HITS Redemption Date or a Corporate HITS Redemption Date, as applicable.

"*Redemption Price*" means, (i) with respect to a redemption of Preferred HITS, the Preferred HITS Redemption Price, and (ii) with respect to a redemption of Corporate HITS, the Corporate HITS Redemption Price.

"*Regular Distribution Date*" means:

(a) each March 15, June 15, September 15 and December 15 commencing June 15, 2007 (or, in the case of Treasury HITS, the first such date on which Treasury HITS are outstanding); and

(b) the Stock Purchase Date if not otherwise a Regular Distribution Date;

provided, *however*, that the last Regular Distribution Date for the Treasury HITS shall be the Stock Purchase Date (except to the extent floating rate subordinated notes relating to deferred interest are outstanding); and *provided that* if any Regular Distribution Date is not a Business Day, the Regular Distribution Date shall be the next Business Day.

"*Regular Trustee*" means each of the individuals identified as a "Regular Trustee" in the preamble to this Declaration solely in such individual's capacity as Regular Trustee of the Trust and not in such individual's individual capacity, or such Regular Trustee's successor in interest in such capacity, or any successor trustee appointed as herein provided.

"*Relevant Trustee*" shall have the meaning specified in Section 8.10.

"*Remarketing*" has the meaning specified in the Thirteenth Supplemental Indenture.

"*Remarketing Agent*" means, as to a Remarketing and Remarketing Agreement, the remarketing agent and any successor or replacement remarketing agent appointed by the Corporation.

"*Remarketing Agent's Fee*" means, as to the Remarketing Agent and a Remarketing, the fee provided for in the Remarketing Agreement.

"*Remarketing Agreement*" means the Remarketing Agreement to be entered into prior to the first Remarketing among the Corporation, the Trust (acting through the Property Trustee) and the Remarketing Agent, as amended or supplemented from time to time.

"*Remarketing Period*" has the meaning specified in the Thirteenth Supplemental Indenture.

"*Remarketing Settlement Date*" has the meaning specified in the Thirteenth Supplemental Indenture.

"*Reset Rate*" has the meaning specified in the Thirteenth Supplemental Indenture (and is the interest rate applicable to the Notes and the Corporate HITS Distribution Rate commencing on the Remarketing Settlement Date).

"*Responsible Officer*" means, with respect to any Trustee other than a Regular Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs 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 such person's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Declaration.

"*Securities Act*" means the Securities Act of 1933, and any successor statute thereto, in each case as amended from time to time.

"*Securities Intermediary*" means The Bank of New York Trust Company, N.A., as Securities Intermediary under the Collateral Agreement until a successor Securities Intermediary shall have become such pursuant to the applicable provisions of the Collateral Agreement, and thereafter "Securities Intermediary" shall mean such successor or any subsequent successor who is appointed pursuant to the Collateral Agreement.

"*Securities Register*" has the meaning specified in Section 5.4.

"*Securities Registrar*" means the transfer agent and registrar designated by the Regular Trustees for the Trust Securities pursuant to Section 5.4.

"*Special Event*" means a Tax Event, Capital Treatment Event or an Investment Company Event.

"*Splitting Notice and Request*" has the meaning specified in Section 5.13(b)(iii).

"*Sponsor*" has the meaning specified in the preamble to this Declaration.

"*Stock Purchase Contract*" has the meaning specified in the Stock Purchase Contract Agreement.

"*Stock Purchase Contract Agreement*" means the Stock Purchase Contract Agreement, dated as of the date hereof, between the Corporation and the Property Trustee (acting on behalf of the Trust).

"*Stock Purchase Date*" has the meaning specified in the Stock Purchase Contract Agreement.

"*Subscription Agreement*" means the Subscription Agreement dated as of February 12, 2007 for the purchase of Common Securities by the Corporation, executed and delivered by the Corporation and a Regular Trustee on behalf of the Trust.

"*Successful*" has the meaning specified in the Thirteenth Supplemental Indenture.

"*Successor Securities*" has the meaning specified in Section 9.5.

"*Tax Event*" means the Trust or the Corporation has requested and received an opinion of counsel (which may be the Corporation's counsel or counsel of an Affiliate but not an employee and which must be reasonably acceptable to the Property Trustee) experienced in tax matters to the effect that, as a result of any (i) amendment to or change in the laws or regulations of the United States or any political subdivision or taxing authority of or in the United States that is enacted or becomes effective after the initial issuance of the HITS; (ii) proposed change in those laws or regulations that is announced after the initial issuance of the HITS; or (iii) official administrative decision or judicial decision or administrative action or other administrative pronouncement interpreting or applying those laws or regulations, including revocation of an existing pronouncement, that is announced or communicated to the Corporation or the Trust in respect of the HITS after the initial issuance of the HITS, there is more than an insubstantial risk that: (a) the Trust is, or will be, subject to United States federal income tax with respect to income received or accrued on any assets held by the Trust; (b) interest payable by the Corporation on the Notes is not, or will not be, deductible by the Corporation, in whole or in part, for United States federal income tax purposes; or (c) the Trust is, or will be, subject to more than a de minimis amount of other taxes, duties or other governmental charges.

"Thirteenth Supplemental Indenture" means the Thirteenth Supplemental Indenture to the Base Indenture, dated as of the date hereof, between the Corporation and the Note Trustee, as amended or supplemented from time to time.

"*Three-Month LIBOR*" means, for any Distribution Period, "Three-Month LIBOR" for the corresponding Dividend Period as defined in and determined pursuant to the Certificate of Designations.

"*Time of Delivery*" means February 16, 2007.

"*Transaction Agreements*" means each of the Collateral Agreement, the Guarantee Agreements, the Base Indenture, the Thirteenth Supplemental Indenture, the Notes, the Remarketing Agreement, the

Stock Purchase Contract Agreement, the Underwriting Agreement, the Note Purchase Agreement, the Replacement Capital Covenant, dated as of the date hereof, by the Corporation in favor of and for the benefit of each Covered Debtholder (as defined therein), and any other agreement determined by a Trustee to be appropriate in exercising the authority, express or implied, otherwise granted to the Trustees under this Declaration.

"*Treasury HITS*" means a beneficial interest in the Trust, having a Liquidation Amount of $1,000 and having the rights provided for Treasury HITS in this Declaration, including the right to receive Distributions and a Liquidation Distribution as provided herein.

"*Treasury HITS Certificate*" means a certificate evidencing ownership of Treasury HITS, substantially in the form attached as Exhibit E.

"*Treasury HITS Distribution Rate*" means 0.15% per annum accruing for each Treasury HITS from the Regular Distribution Date immediately preceding its issuance, on a cumulative basis.

"*Treasury HITS Treasury Roll Over Amount*" means, for each Additional Distribution Date on which Treasury HITS are Outstanding, an amount per $1,000 of Treasury HITS equal to the excess (if any) of $1,000 (which is the principal amount of Pledged Treasury Securities per Treasury HITS maturing at least one but not more than six Business Days prior to such date) over the amount required to be expended by the Collateral Agent to purchase Qualifying Treasury Securities maturing at least one Business Day prior to that Additional Distribution Date.

"*Trust*" means the Delaware statutory trust known as "BAC Capital Trust XIII", which was created under the Delaware Statutory Trust Act pursuant to the Original Declaration and the filing of the Certificate of Trust, and continued pursuant to this Declaration.

"*Trustees*" means, collectively, the Property Trustee, the Delaware Trustee, and the Regular Trustees.

"*Trust Indenture Act*" means the Trust Indenture Act of 1939 as in force at the date as of which this instrument was executed;*provided*, *however*, that in the event the Trust Indenture Act of 1939 is amended after such date, "*Trust Indenture Act*" means, to the extent required by any such amendment, the Trust Indenture Act of 1939, as so amended.

"*Trust Property*" means (a) the Notes for so long as they are owned by the Trust in accordance with this Declaration, (b) the Stock Purchase Contracts, (c) the Preferred Stock once acquired by the Trust pursuant to the Stock Purchase Contracts, (d) treasury securities (that are required to be Qualifying Treasury Securities when delivered) delivered to the Property Trustee (or the Collateral Agent) pursuant to Section 5.13 or Section 5.14, (e) the rights of the Trust under the Transaction Agreements, and (f) all proceeds and rights in respect of the foregoing and any other property and assets for the time being held or deemed to be held by the Property Trustee pursuant to the Declaration.

"*Trust Security*" means any one of the Common Securities or any of the three Classes of the HITS.

"*Trust Securities Certificate*" means any one of the Common Securities Certificates or the HITS Certificates.

"*Underwriting Agreement*" means the Underwriting Agreement, dated February 12, 2007, among the Trust, the Corporation and the underwriters named therein.

"*United States Person*" means, for U.S. federal income tax purposes, a citizen or resident of the United States, a domestic partnership, a domestic corporation, an estate the income of which is subject to U.S. federal income taxation regardless of its source, and a trust if (i) a court within the United States is able to exercise primary supervision over the administration of the trust, and (ii) one or more United States persons have the authority to control all substantial decisions of the trust.

ARTICLE II

CONTINUATION OF THE TRUST; ISSUANCE OF HITS; AND RELATED MATTERS

Section 2.1 *Name.*

The trust continued hereby shall be known as "BAC Capital Trust XIII," as such name may be modified from time to time by the Regular Trustees following written notice to the Holders and the other Trustees, in which name the Regular Trustees and the other Trustees may conduct the business of the Trust, make and execute contracts and other instruments on behalf of the Trust and sue and be sued on behalf of the Trust.

Section 2.2 *Office of the Delaware Trustee; Principal Place of Business.*

The address of the Delaware Trustee in the State of Delaware is The Bank of New York (Delaware), 100 White Clay Center, Route 273, Newark, Delaware 19711, or such other address in the State of Delaware as the Delaware Trustee may designate by written notice to the Sponsor, the Property Trustee and the Regular Trustees. The principal executive office of the Trust is c/o Bank of America Corporation, NC1-007-07-06, 100 North Tryon Street, Charlotte, North Carolina, 28255, Attention: Corporate Treasury—Securities Administration.

Section 2.3 *Initial Contribution of Trust Property; Organizational Expenses.*

The Trustees acknowledge receipt from the Sponsor in connection with the Original Declaration of the sum of $10, which constituted the initial Trust Property. The Sponsor shall pay organizational expenses of the Trust as they arise or shall, upon request of any Trustee, promptly reimburse such Trustee for any such expenses paid by such Trustee. The Sponsor shall not make any claim upon the Trust Property for the payment of such expenses.

Section 2.4 *Issuance of the HITS.*

(a) On February 12, 2007, the Regular Trustees, on behalf of the Trust, and the Sponsor executed and delivered the Underwriting Agreement, which action is hereby authorized, approved, ratified and confirmed in all respects. Contemporaneously with the execution and delivery of this Declaration, a Regular Trustee, on behalf of the Trust, in connection with the execution and delivery on such date of 700,000 Preferred HITS to the underwriters named in the Underwriting Agreement, shall execute in accordance with Section 5.3 and deliver to the Clearing Agency a Preferred HITS Certificate or Certificates that are Book-Entry HITS Certificates, registered in the name of the Clearing Agency (or its nominee) representing 700,000 Preferred HITS, against payment of $1,000 per Preferred HITS or $700,000,000 in the aggregate, net of the applicable underwriting discount determined in accordance with the Underwriting Agreement, as the purchase price therefor in immediately available funds, which funds such Regular Trustee shall promptly deliver to the Property Trustee or its designee. On any one or more dates after the execution and delivery of this Declaration additional Preferred HITS Certificates or

Certificates that are Book-Entry HITS Certificates representing Preferred HITS may be issued in accordance with this Section 2.4(a), executed in accordance with Section 5.3 and delivered to the Clearing Agency, registered in the name of the nominee of the Clearing Agency (or its nominee), against payment of $1,000 per Preferred HITS plus accumulated Distributions, net of the applicable underwriting discount determined in accordance with the terms of an underwriting agreement to be entered into by the Regular Trustees, on behalf of the Trust, the Sponsor and the underwriters named therein, as the purchase price therefore in immediately available funds, which funds such Regular Trustees shall promptly deliver to the Property trustee or its designee; *provided, however*, that the total Liquidation Amount of additional Preferred HITS to be so issued may not exceed $500,000,000. Such additional Preferred HITS may be issued at a different offering price and accrue distributions from a different date than the Preferred HITS being issued hereby.

(b) On the date on which a Regular Trustee, on behalf of the Trust executes and delivers a Preferred HITS Certificate pursuant to Section 2.4(a), such Regular Trustee shall also execute in accordance with Section 5.3 and deliver to the Clearing Agency or the Certificate Custodian two additional Book-Entry HITS Certificates, one of which shall be a Corporate HITS Certificate and the other of which shall be a Treasury HITS Certificate, each representing up to a maximum number of Corporate HITS or Treasury HITS, as applicable, that is the same as the number of Preferred HITS evidenced by the Certificate contemporaneously issued as a Book-Entry HITS Certificate pursuant to Section 2.4(a). In connection with any subsequent issuance of Preferred HITS as set forth in the third sentence of Section 2.4(a), a Regular Trustee, on behalf of the Trust, contemporaneously with any such additional issuance, shall execute in accordance with Section 5.3 and deliver to the Clearing Agency or the Certificate Custodian two additional Book-Entry Certificates, one of which shall be a Corporate HITS Certificate and the other of which shall be a Treasury HITS Certificate, each representing up to a maximum number of Corporate HITS or Treasury HITS, as applicable that is the same as the number of Preferred HITS as evidenced by the Certificate contemporaneously issued as a Book-Entry HITS Certificate pursuant to Section 2.4(a) in connection with such subsequent issuance.

(c) In order to give effect to Exchanges, the Securities Registrar may, as provided in Section 5.11, endorse Book-Entry HITS Certificates to reduce or increase the number of Preferred HITS, Treasury HITS or Corporate HITS evidenced by each such Book-Entry HITS Certificate, *provided* that no such endorsement shall result in a Book-Entry HITS Certificate evidencing a number of Preferred HITS, Treasury HITS or Corporate HITS exceeding the maximum number set forth on the face of such Certificate.

Section 2.5 *Issuance of the Common Securities; Subscription and Purchase of Notes.*

Contemporaneously with the execution and delivery of this Declaration, a Regular Trustee, on behalf of the Trust, shall execute in accordance with Section 5.3 and deliver to the Sponsor a Common Securities Certificate, registered in the name of the Sponsor, evidencing 100 Common Securities, each having a Liquidation Amount of $1,000 and having an aggregate Liquidation Amount of $100,000, against payment by the Sponsor of the purchase price therefor in immediately available funds, which amount such Regular Trustee shall promptly deliver to the Property Trustee or its designee. Contemporaneously therewith, a Regular Trustee, on behalf of the Trust, shall (x) subscribe to and purchase from the Corporation the Notes registered in the name of the Property Trustee on behalf of the Trust and having an aggregate initial principal amount equal to $700,100,000, (y) shall deliver to the Corporation the purchase price therefor (being the sum of the amounts delivered to the Property Trustee or its designee pursuant to (i) the second sentence of Section 2.4 and (ii) the first sentence of this Section 2.5), and (z) shall instruct the Corporation to deliver the Notes to the Collateral Agent for deposit in the Collateral Account. In connection with any subsequent issuance of Preferred HITS as set forth in

the third sentence of Section 2.4(a), a Regular Trustee, on behalf of the Trust, contemporaneously with any such additional issuance, shall subscribe to and purchase from the Corporation Notes, registered in the name of the Property Trustee and having an aggregate principal amount equal to the aggregate Liquidation Amount of the additional Preferred HITS being issued by the Trust pursuant to the third sentence of Section 2.4(a) against payment of a purchase price equal to the aggregate purchase price of the Preferred HITS being so issued.

Section 2.6 *Declaration*.

The exclusive purposes and functions of the Trust are and the Trust shall have the power and authority (a) to issue and sell Trust Securities, (b) to use the gross proceeds from such sale to invest in and purchase the Notes, (c) to enter into and perform its obligations under the Transaction Agreements (including, on the Stock Purchase Date, to purchase Preferred Stock pursuant to the Stock Purchase Contracts), (d) to hold the Notes and certain U.S. Treasury securities and the Bank of America Deposit and pledge them to secure the Trust's obligations under the Stock Purchase Contracts, and (e) to engage in those activities necessary or incidental thereto. The Sponsor hereby appoints the Trustees as trustees of the Trust, to have all the rights, powers and duties to the extent set forth herein, and the Trustees hereby accept such appointment. The Property Trustee hereby declares that it will hold the Trust Property upon and subject to the conditions set forth herein for the benefit of the Trust and the Holders. The Regular Trustees shall have all rights, powers and duties set forth herein and in accordance with applicable law with respect to accomplishing the purposes of the Trust. 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 Property Trustee or the Regular Trustees, or any of the duties and responsibilities of the Trustees generally, set forth herein. The Delaware Trustee shall be one of the trustees of the Trust for the sole and limited purpose of fulfilling the requirements of Section 3807(a) of the Delaware Statutory Trust Act and for taking such actions as are required to be taken by a Delaware trustee under the Delaware Statutory Trust Act. To the extent that, at law or in equity, the Delaware Trustee has duties (including fiduciary duties) and liabilities relating thereto to the Trust or the Holders, it is hereby understood and agreed that such duties and liabilities are replaced by the duties and liabilities of the Delaware Trustee expressly set forth in this Declaration. The Delaware Trustee shall be entitled to all of the same rights, protections, indemnities and immunities under this Declaration and with respect to the Trust as the Property Trustee.

Section 2.7 *Authorization to Enter into Certain Transactions.*

(a) The Trustees shall conduct the affairs of the Trust in accordance with the terms of this Declaration. Subject to the limitations set forth in Section 2.7(b), and in accordance with the following clauses (i) and (ii) of this Section 2.7(a), the Trustees shall have the authority to enter into all transactions and agreements determined by the Trustees to be appropriate in exercising the authority, express or implied, otherwise granted to the Trustees under this Declaration, and to perform all acts in furtherance thereof, including the following:

(i) As among the Trustees, the Regular Trustees, and each of them, shall have the power and authority to act on behalf of the Trust with respect to the following matters:

(A) execution of the Trust Securities on behalf of the Trust in accordance with this Declaration and the issuance and sale of the Trust Securities;

(B) causing the Trust to perform the Underwriting Agreement, the Note Purchase Agreement and the Subscription Agreement and causing the Trust to enter into, and to execute, deliver and perform, each of the Underwriting Agreement, the Note Purchase Agreement and the Subscription Agreement and any other such agreements as may be necessary or desirable in connection with the purposes and function of the Trust;

(C) assisting in the registration of the HITS under the Securities Act and under state securities or blue sky laws, and the qualification of this Declaration under the Trust Indenture Act;

(D) assisting in the listing of the HITS upon such securities exchange or exchanges, if any, as shall be determined by the Sponsor, with the registration of the HITS under the Exchange Act, if required, and with the preparation and filing of all periodic and other reports and other documents pursuant to the foregoing;

(E) assisting in the sending of notices (other than notices of default) and other information regarding the Trust Securities, the Notes and the Preferred Stock to the Holders in accordance with this Declaration;

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

(G) appointing a Paying Agent and a Securities Registrar and any successor Paying Agent or Securities Registrar in accordance with this Declaration to The Bank of New York Trust Company, N.A. as Paying Agent and as Securities Registrar;

(H) to the extent provided in this Declaration, the winding up of the affairs of and liquidation of the Trust and the execution and filing of the certificate of cancellation with the Secretary of State of the State of Delaware;

(I) execution and delivery of closing certificates, if any, pursuant to the Underwriting Agreement and any Remarketing Agreement and application for a taxpayer identification number for the Trust;

(J) unless otherwise required by the Delaware Statutory Trust Act, the Trust Indenture Act or other applicable law, execution on behalf of the Trust (either acting alone or together with any or all of the Regular Trustees) of any documents that the Regular Trustees have the power to execute pursuant to this Declaration;

(K) the taking of any action incidental to the foregoing as the Trustees may from time to time determine is necessary or advisable to give effect to the terms of this Declaration; and

(L) the taking of any action required to be taken by the Regular Trustees under any of the Transaction Agreements.

(ii) As among the Trustees, the Property Trustee shall have the power, duty and authority to act on behalf of the Trust with respect to the following matters:

(A) the establishment of the Payment Account;

(B) the execution and delivery on behalf of the Trust of the Stock Purchase Contract Agreement, the Collateral Agreement, the Remarketing Agreement, and any other Transaction Agreement other than the Underwriting Agreement and the performance by the Trust of its obligations and the exercise by the Trust of its rights thereunder;

(C) the receipt of the Notes and, in connection with an Exchange, Notice of Contingent Exchange Election or Remarketing, the receipt of Qualifying Treasury Securities;

(D) the pledge of Notes and Qualifying Treasury Securities pursuant to the Collateral Agreement;

(E) the receipt of the Preferred Stock on the Stock Purchase Date;

(F) the collection of interest, principal and any other payments or instruments (including due bills or promissory notes of the Corporation issuable under or with respect to the Notes) made in respect of the Notes and the holding of such amounts in the Payment Account;

(G) the collection of the Contract Payments and any other payments or instruments (including due bills or promissory notes of the Sponsor issuable under the Stock Purchase Contract Agreement or with respect to the Contract Payments) and the holding of such amounts in the Payment Account;

(H) the collection of payment of dividends, redemption price and other payments made in respect of the Preferred Stock and the holding of such amounts in the Payment Account;

(I) the distribution through the Paying Agent of amounts or property or instruments (including due bills or promissory notes of the Corporation issuable under or with respect to the Notes or the Stock Purchase Contracts) distributable to the Holders in respect of the Trust Securities;

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

(K) the exercise of all of the rights, powers and privileges of a holder of the Notes for so long as the Trust holds Notes, subject to Articles V and VI of this Declaration;

(L) the exercise of all of the rights, powers and privileges of a holder of Preferred Stock for so long as the Trust holds Preferred Stock, subject to Articles V and VI of this Declaration;

(M) the sending of notices of default and other information regarding the Trust Securities, the Notes, the Preferred Stock and the Transaction Agreements to the Holders in accordance with this Declaration;

(N) the distribution of the Trust Property in accordance with the terms of this Declaration;

(O) to the extent provided in this Declaration, the winding up of the affairs of and liquidation of the Trust and the preparation, execution and filing of the certificate of cancellation with the Secretary of State of the State of Delaware; and

(P) after an Event of Default (other than under paragraph (c), (d) or (e) of the definition of such term if such Event of Default is by or with respect to the Property Trustee), the taking of any action incidental to the foregoing as the Property Trustee may from time to time determine is necessary or advisable to give effect to the terms of this Declaration and to protect and conserve the Trust Property for the benefit of the Holders (without consideration of the effect of any such action on any particular Holder).

Except as otherwise provided in this Section 2.7(a)(ii), the Property Trustee shall have none of the duties, liabilities, powers or the authority of the Regular Trustees set forth in Section 2.7(a)(i).

(b) So long as this Declaration remains in effect, the Trust (or the Trustees acting on behalf of the Trust) shall not undertake any business, activities or transactions except as expressly provided herein or contemplated hereby. In particular, the Trustees (acting on behalf of the Trust) shall not (i) acquire any investments or engage in any activities not authorized by this Declaration, (ii) sell, assign, transfer, exchange, mortgage, pledge, set-off or otherwise dispose of any of the Trust Property or interests therein, including to Holders, except as expressly provided herein, (iii) take any action that would cause the Trust to become taxable as a corporation or classified as a partnership for U.S. federal income tax purposes, (iv) incur any indebtedness for borrowed money or issue any other debt, (v) take or consent to any action that would result in the placement of a Lien on any of the Trust Property, except as expressly provided herein, (vi) apply any of the Trust Property or its proceeds other than as provided herein, (vii) acquire any assets other than the Trust Property, (viii) possess any power or otherwise act in such a way as to vary the Trust Property, except as expressly provided herein, (ix) possess any power or otherwise act in such a way as to vary the terms of the Trust Securities in any way whatsoever (except to the extent expressly authorized in this Declaration or by the terms of the Trust Securities) or (x) issue any securities or other evidences of beneficial ownership of, or beneficial interest in, the Trust other than the Trust Securities. The Property Trustee shall defend all claims and demands of all Persons at any time claiming any Lien on any of the Trust Property adverse to the interest of the Trust or the Holders in their capacity as Holders (other than the Lien created by the Collateral Agreement, which is a permitted Lien).

(c) In connection with the issuance and sale of the Preferred HITS, the Sponsor shall have the right and, if the Sponsor shall desire that the actions be taken, the responsibility to assist the Trust with respect to, or effect on behalf of the Trust, the following (and any actions taken by the Sponsor in furtherance of the following prior to the date of this Declaration are hereby ratified and confirmed in all respects):

(i) the preparation and filing by the Trust with the Commission and the execution on behalf of the Trust of a registration statement on the appropriate form in relation to the HITS, including any amendments thereto;

(ii) the determination of the states in which to take appropriate action to qualify or register for sale all or part of the HITS and the determination of any and all such acts, other than actions that must be taken by or on behalf of the Trust, and the advice to the Trust of actions they must take on behalf of the Trust, and the preparation for execution and filing of any documents to be executed and filed by the Trust or on behalf of the Trust, as the Sponsor deems necessary or advisable in order to comply with the applicable laws of any such states;

(iii) the preparation for filing by the Trust and execution on behalf of the Trust of an application to the New York Stock Exchange or any other national stock exchange or the Nasdaq National Market or any other automated quotation system for listing upon notice of issuance of any HITS and filing with such exchange or self-regulatory organization such notification and documents as may be necessary from time to time to maintain such listing;

(iv) the negotiation of the terms of, and the execution and delivery of, the Underwriting Agreement providing for the sale of the Preferred HITS; and

(v) the taking of any other actions necessary or desirable to carry out any of the foregoing activities.

(d) Notwithstanding anything herein to the contrary, the Regular Trustees are authorized and directed to conduct the affairs of the Trust and to operate the Trust so that the Trust will not be deemed to be an "investment company" required to be registered under the Investment Company Act, and will not be taxable as a corporation or classified as a partnership for U.S. federal income tax purposes. In this connection, the Sponsor and the Regular Trustees are authorized to take any action, not inconsistent with applicable law, the Certificate of Trust or this Declaration, that they determine in their discretion to be necessary or desirable for such purposes, as long as such action does not adversely affect in any material respect the interests of the Holders of the Outstanding HITS. In no event shall the Sponsor or the Trustees be liable to the Trust or the Holders for any failure to comply with this Section that results from a change in law or regulation or in the interpretation thereof.

Section 2.8 *Assets of the Trust.*

The assets of the Trust shall consist solely of the Trust Property.

Section 2.9 *Title to Trust Property.*

Legal title to all Trust Property shall be vested at all times in the Property Trustee (in its capacity as such) and shall be held and administered by the Property Trustee in trust for the benefit of the Trust and the Holders in accordance with this Declaration, subject to the terms and provisions of the Collateral Agreement.

ARTICLE III

PAYMENT ACCOUNT

Section 3.1 *Payment Account.*

(a) On or prior to the Closing Date, the Property Trustee shall establish or cause to be established the Payment Account. The Property Trustee and its agents shall have exclusive control and sole right of withdrawal with respect to the Payment Account for the purpose of making deposits in and withdrawals from the Payment Account in accordance with this Declaration. All monies and other property deposited or held from time to time in the Payment Account shall be held by the Property Trustee in the Payment Account for the exclusive benefit of the Holders and for distribution as herein provided, including (and subject to) any priority of payments provided for herein.

(b) The Property Trustee shall deposit or cause to be deposited in the Payment Account, promptly upon receipt, (i) all payments of principal of or interest on, and any other payments or proceeds with respect to, the Notes, (ii) all Contract Payments, (iii) all Excess Proceeds Distributions, (iv) all

Treasury HITS Treasury Roll Over Amounts, (v) all payments of dividends or redemption price on, and other payments or proceeds with respect to, the Preferred Stock or the Stock Purchase Contracts and (vi) all other cash amounts received as payments on or with respect to the Trust Property. Amounts held in the Payment Account shall not be invested by the Property Trustee pending distribution thereof.

ARTICLE IV

DISTRIBUTIONS; REDEMPTION, ETC.

Section 4.1 *Distributions*.

(a) The Trust Securities represent beneficial interests in the Trust, and Distributions will be made on the Trust Securities of a Class on applicable Distribution Dates in amounts that correspond to amounts of interest, dividends or Contract Payments, as applicable (and (i) in the case of the Preferred HITS, Corporate HITS and Common Securities and Deferred Note Interest Amounts, and (ii) in the case of the Preferred HITS, Treasury HITS and Common Securities, Deferred Contract Payment Amounts) that are received by the Property Trustee or the Paying Agent on or in connection with each applicable Distribution Date on the Trust Property that is the Corresponding Assets for such Class, as provided in Sections 4.1(b), (c) and (d).

(b) In the case of the Preferred HITS and the Common Securities, subject to Section 4.1(e):

(i) Distributions will be payable in cash on each Regular Distribution Date;

(ii) the Distributions payable on each Regular Distribution Date for the related Distribution Period will be at a rate per annum applied to the Liquidation Amount per Preferred HITS and Common Security equal to the Preferred HITS Distribution Rate for such Distribution Period (with the consequence that the amount of the Distribution for each $1,000 of Preferred HITS or Common Securities payable on each Regular Distribution Date being equal to (x) the sum of the amount of interest payable on such Regular Distribution Date on a Like Amount of Notes (without giving effect to any change in the interest rate on the Notes in connection with a Remarketing) plus 1/100th of the Contract Payment payable on a Stock Purchase Contract having a stated amount of $100,000 for each Distribution Period ending on or before the Stock Purchase Date and (y) the amount of dividends payable on such Regular Distribution Date on a Like Amount of Preferred Stock for each Distribution Period thereafter); and

(iii) Distributions shall be cumulative for each Regular Distribution Date to and including the Stock Purchase Date (because the Corresponding Assets to such date include Notes or Pledged Securities in a Like Amount) and non-cumulative thereafter (because the Corresponding Assets thereafter are the Preferred Stock).

(c) In the case of Corporate HITS, subject to Section 4.1(e):

(i) Distributions will be payable in cash on each Corporate HITS Distribution Date;

(ii) the Distributions payable on each Corporate HITS Distribution Date for the related Distribution Period will be at a rate per annum applied to the Liquidation Amount per Corporate HITS equal to the Corporate HITS Distribution Rate for such Distribution Period, with the consequence that the amount of the Distribution for each $1,000 of Corporate HITS payable on each Corporate HITS Distribution Date is equal to the amount of interest payable on or accrued to (as applicable) such Distribution Date on a Like Amount of Notes; and

(iii) Distributions shall be cumulative.

(d) In the case of Treasury HITS, subject to Section 4.1(e)

(i) Distributions will be payable in cash on each Regular Distribution Date;

(ii) the Distributions payable on each Regular Distribution Date for the related Distribution Period will be at a rate per annum applied to the Liquidation Amount per Treasury HITS equal to 1/100th of the Contract Payment payable on a Stock Purchase Contract having a stated amount of $100,000 on such Treasury HITS Distribution Date (expressed as a percentage);

(iii) Distributions shall be cumulative; and

(iv) additionally, on each Additional Distribution Date on which Treasury HITS are Outstanding (or as promptly thereafter as the Collateral Agent and the Paying Agent determine to be practicable), the Property Trustee shall distribute or cause to be distributed through the Paying Agent an amount per $1,000 of Treasury HITS equal to the Treasury HITS Treasury Roll-Over Amount for such Additional Distribution Date.

(e) Distributions on the Trust Securities of a Class shall be made by the Paying Agent from the Payment Account and shall be payable on each Distribution Date only to the extent that the Trust has funds then on hand and available in the Payment Account from the Corresponding Assets of such Class for the payment of such Distributions. The Trust will have amounts to make full Distributions on the relevant Classes of Trust Securities in accordance with Sections 4.1(b), (c) and (d) on an applicable Distribution Date only if the Corporation has not (i) defaulted in paying interest on the Notes or Contract Payments on the Stock Purchase Contracts or (ii) exercised its right to defer payment of interest on the Notes and Contract Payments on the Stock Purchase Contracts and, accordingly, there is no outstanding Deferred Note Interest Amount or Deferred Contract Payment Amount. Deferred Note Interest Amounts and Deferred Contract Payment Amounts will be paid to Holders of the relevant Classes of Trust Securities on a *pro rata* basis on the applicable Distribution Dates on which such amounts are received by the Trust (or as soon thereafter as the Property Trustee determines to be practicable).

(f) In the event the Property Trustee or the Paying Agent receives any other cash or non-cash payments or distributions with respect to Corresponding Assets for any Class of HITS (including promissory notes of the Corporation delivered pursuant to (i) Section 2.7(c) of the Stock Purchase Contract Agreement if there are any Deferred Contract Payment Amounts outstanding on the Stock Purchase Date or (ii) Section 2.7(f) of the Thirteenth Supplemental Indenture if there are any Deferred Note Interest Amounts outstanding on the Stock Purchase Date), the Property Trustee shall distribute or cause to be distributed through the Paying Agent such cash amounts to the Holders of the related Classes of HITS on a *pro rata* basis promptly after receipt and may, in its discretion, distribute non-cash amounts on a*pro rata* basis (or on a basis that is as close as possible to a *pro rata* basis as it determines to be reasonably practicable).

(g) Distributions in cash on the Trust Securities of a Class with respect to an applicable Distribution Date shall be payable to the Holders thereof as they appear on the Securities Register for the Trust Securities at the close of business on the relevant record date for such Distribution Date, which shall be the last day of the month immediately preceding the month in which the relevant Distribution Date falls. Distributions payable on any Trust Securities of a Class that are not punctually paid on an applicable Distribution Date will cease to be payable to the Person in whose name such Trust Securities are registered on the relevant record date, and such defaulted Distribution will instead be payable to the Person in whose name such Trust Securities are registered on the special record date or other specified date for determining Holders entitled to such defaulted Distributions.

Section 4.2 *Redemption.*

(a) Mandatory redemption of Preferred HITS upon redemption of Preferred Stock. On each Preferred Stock Redemption Date, the Trust will be required to redeem a Like Amount of Preferred HITS and Common Securities at the redemption price for the Preferred Stock (it being understood and agreed that, because (i) the Preferred Stock will not become Trust Property until the Stock Purchase Date, and (ii) on the Stock Purchase Date, subject to Section 4.8, each $1,000 Liquidation Amount of Treasury HITS will automatically become $1,000 Liquidation Amount of Preferred HITS (and if any subordinated notes have been issued in respect of any Deferred Note Interest Amount such subordinated notes will be distributed to the holders of the Preferred HITS), without any action by or on behalf of Holders being necessary, unless there is a Note Redemption Date resulting from a Special Event, no redemption of Preferred HITS, Treasury HITS or Common Securities will occur prior to the Stock Purchase Date).

(b) Mandatory redemption of Corporate HITS. On the maturity of the Notes or each Note Redemption Date, the Trust will be required to redeem a Like Amount of Corporate HITS at the Note Redemption Price (it being understood and agreed that, because (i) the Notes by their terms, except in the case of a Special Event, are not redeemable prior to March 15, 2017, (ii) the Trust is required to redeem the Corporate HITS in kind after the Stock Purchase Date pursuant to Section 4.2(c) if there is a Successful Remarketing, and (iii) the Sponsor has the right to cause the Trust to redeem the Corporate HITS in kind after the Stock Purchase Date pursuant to Section 4.2(c) if there is a Failed Remarketing or if the Stock Purchase Contracts terminate, a redemption of Corporate HITS other than in kind pursuant to such Section 4.2(c) will only occur after March 15, 2017 and only if there is a Failed Remarketing and the Sponsor does not exercise its right to cause the Trust to redeem the Corporate HITS in kind).

(c) Redemption in connection with a Remarketing. If a Successful Remarketing occurs, then promptly after the Remarketing Settlement Date the Trust shall redeem the Corporate HITS, in whole but not in part, in kind by exchanging for each Corporate HITS a Like Amount of Notes. If a Failed Remarketing occurs but on the Stock Purchase Date there is no Deferred Note Interest Amount outstanding, then promptly after the Stock Purchase Date the Trust shall redeem the Corporate HITS, in whole but not in part, in kind by exchanging for each Corporate HITS a Like Amount of Notes. If a Failed Remarketing occurs and there is a Deferred Note Interest Amount outstanding on the Stock Purchase Date, or if the Stock Purchase Contracts terminate in accordance with the terms of the Stock Purchase Contract Agreement prior to a Stock Purchase Date occurring, then the Sponsor may instruct the Trust at any time thereafter when no Deferred Note Interest Amount is outstanding to redeem the Corporate HITS, in whole but not in part, in kind by exchanging for each Corporate HITS a Like Amount of Notes. Any such redemption will be effected by Book-Entry Transfer of Notes in global form if the Notes then settle and clear through the Clearing Agency, and if the Notes do not then settle and clear through the Clearing Agency by delivery of definitive certificates evidencing the Notes to the Holders of Corporate HITS.

(d) Redemption in Connection with a Special Event. At any time within 90 days after a Tax Event, Capital Treatment Event or an Investment Company Event, the Corporation shall have the right to redeem, in whole but not in part, the Notes at the Note Redemption Price and all HITS will be redeemed pro rata based upon their respective Corresponding Assets.

(e) Notice of redemption. Notice of redemption shall be given by the Property Trustee by first-class mail, postage prepaid, mailed not less than 15 nor more than 60 days prior to the Redemption Date to each Holder of Trust Securities to be redeemed, at such Holder's address appearing in the Security Register. All notices of redemption shall state:

(i) the Redemption Date;

(ii) unless the redemption is a redemption of Corporate HITS in kind pursuant to Section 4.2(c), the Redemption Price or if the Redemption Price cannot be calculated prior to the time the notice is required to be sent, the estimate of the Redemption Price together with a statement that it is an estimate and that the actual Redemption Price will be calculated on the third Business Day prior to the Redemption Date (and if an estimate is provided, a further notice shall be sent of the actual Redemption Price on the date that such Redemption Price is calculated);

(iii) the CUSIP number or CUSIP numbers of the HITS affected;

(iv) if less than all the Outstanding Trust Securities are to be redeemed, the identification and the aggregate Liquidation Amount of the particular Trust Securities of the relevant Class to be redeemed;

(v) that on the Redemption Date the Redemption Price will become due and payable upon each such Trust Security to be redeemed and that Distributions thereon will cease to accumulate on and after said date, except as provided in Section 4.2(f)(ii) below; and

(vi) if the HITS Certificates are not Book-Entry HITS Certificates on the Redemption Date, the place or places where the HITS Certificates are to be surrendered for the payment of the Redemption Price.

(f) Redemption Price. In the case of a redemption of Preferred HITS and Common Securities pursuant to Section 4.2(a) or Corporate HITS pursuant to Section 4.2(b), in each case for payment of a cash Redemption Price:

(i) The Trust Securities redeemed on each Redemption Date shall be redeemed at the Redemption Price with the proceeds from the contemporaneous redemption of a Like Amount of Preferred Stock or Notes, as applicable. Redemptions of the Trust Securities shall be made and the Redemption Price shall be payable on each Redemption Date only to the extent that the Trust has funds then on hand and available in the Payment Account from the Corporation's redemption of Preferred Stock or Notes, as applicable, for the payment of such Redemption Price.

(ii) If the Property Trustee gives a notice of redemption in respect of any HITS, then, by 12:00 noon, New York City time, on the Redemption Date, subject to Section 4.2(c), the Property Trustee will, with respect to Book-Entry HITS, irrevocably deposit with the Clearing Agency for such Book-Entry HITS, to the extent available therefor, funds sufficient to pay the applicable Redemption Price and will give such Clearing Agency irrevocable instructions and authority to pay the Redemption Price to the Holders of the HITS. With respect to HITS that are not Book-Entry HITS, the Property Trustee, subject to Section 4.2(f)(i), will irrevocably deposit with the Paying Agent, to the extent available therefor, funds sufficient to pay the applicable Redemption Price and will give the Paying Agent irrevocable instructions and authority to pay the Redemption Price to the Holders of the HITS upon surrender of their HITS Certificates. Notwithstanding the foregoing, Distributions payable on or prior to the Redemption Date for any Trust Securities called for redemption shall be payable to the Holders of such Trust Securities as they appear on the Securities Register for the Trust Securities on the relevant record dates for the related Distribution Dates. If notice of redemption shall have been given and funds deposited as required, then upon the date of such deposit, all rights of Holders holding Trust Securities so

called for redemption will cease, except the right of such Holders to receive the Redemption Price and any Distribution payable in respect of the Trust Securities on or prior to the Redemption Date, but without interest, and such Trust Securities will cease to be outstanding. In the event that payment of the Redemption Price in respect of any Trust Securities called for redemption is improperly withheld or refused and not paid either by the Trust or by the Sponsor pursuant to the Guarantee Agreements, Distributions on such Trust Securities will continue to accumulate, as set forth in Section 4.1, from the Redemption Date originally established by the Trust for such Trust Securities to the date such Redemption Price is actually paid, in which case the actual payment date will be the date fixed for redemption for purposes of calculating the Redemption Price.

(iii) Subject to Section 4.3(a), if less than all the Outstanding Preferred HITS and Common Securities are to be redeemed on a Redemption Date, then the aggregate Liquidation Amount of Preferred HITS and Common Securities to be redeemed shall be allocated *pro rata* to the Common Securities and the Preferred HITS being redeemed based upon the relative Liquidation Amounts of such classes. The particular Preferred HITS to be redeemed shall be selected on a *pro rata* basis based upon their respective Liquidation Amounts not more than 60 days prior to the Redemption Date by the Property Trustee from the Outstanding Preferred HITS not previously called for redemption by any method the Property Trustee deems fair and appropriate, *provided* that so long as the Preferred HITS are in book-entry form, such selection shall be made in accordance with the customary procedures for the Clearing Agency for the Preferred HITS. The Property Trustee shall promptly notify the Securities Registrar in writing of the Preferred HITS selected for redemption and, in the case of any Preferred HITS selected for partial redemption, the Liquidation Amount thereof to be redeemed. For all purposes of this Declaration, unless the context otherwise requires, all provisions relating to the redemption of Preferred HITS shall relate, in the case of any Preferred HITS redeemed or to be redeemed only in part, to the portion of the aggregate Liquidation Amount of Preferred HITS that has been or is to be redeemed.

(iv) If less than all the Outstanding Corporate HITS are to be redeemed on a Redemption Date, then the particular Corporate HITS to be redeemed shall be selected on a *pro rata* basis based upon their respective Liquidation Amounts not more than 60 days prior to the Redemption Date by the Property Trustee from the Outstanding Corporate HITS not previously called for redemption by any method the Property Trustee deems fair and appropriate, *provided* that so long as the Corporate HITS are in book-entry form, such selection shall be made in accordance with the customary procedures for the Clearing Agency for the Corporate HITS. The Property Trustee shall promptly notify the Securities Registrar in writing of the Corporate HITS selected for redemption and, in the case of any Corporate HITS selected for partial redemption, the Liquidation Amount thereof to be redeemed. For all purposes of this Declaration, unless the context otherwise requires, all provisions relating to the redemption of Corporate HITS shall relate, in the case of any Corporate HITS redeemed or to be redeemed only in part, to the portion of the aggregate Liquidation Amount of Corporate HITS that has been or is to be redeemed.

Section 4.3 *Subordination of Common Securities.*

(a) If on any Distribution Date the Paying Agent lacks funds available from payments of interest, dividends or Contract Payments (as applicable) to make full Distributions then due on all of the outstanding Trust Securities in accordance with Section 4.1 (other than because of the Sponsor's proper exercise of its right to (i) defer payment of Contract Payments, resulting in Deferred Contract Payment Amounts, or (ii) defer payment of interest on the Notes, resulting in Deferred Note Interest Amounts), then:

(i) if the deficiency in funds results from the Sponsor's failure to make a full payment of interest on the Notes on an interest payment date for the Notes, then the available funds from

the Sponsor's payment of interest on the Notes shall be applied first to make the Distributions then due on the Preferred HITS and the Corporate HITS on a *pro rata* basis on such Distribution Date up to the amount of such Distributions corresponding to interest payments on the Notes (or, if less, the amount of the corresponding Distributions that would have been made on the Preferred HITS and Corporate HITS had the Sponsor made a full payment of interest on the Notes) before any such amount is applied to make a Distribution on Common Securities on such Distribution Date;

(ii) if the deficiency in funds results from the Sponsor's failure to make a full payment of Contract Payments on the Stock Purchase Contracts on a payment date for Contract Payments, then the available funds from the Sponsor's payment of Contract Payments shall be applied first to make Distributions then due on the Preferred HITS and the Treasury HITS on a *pro rata* basis on such Distribution Date up to the amount of such Distributions corresponding to the Contract Payments on the Stock Purchase Contracts (or, if less, the amount of the corresponding Distributions that would have been made on the Preferred HITS and the Treasury HITS had the Sponsor made a full payment of Contract Payments on the Stock Purchase Contracts) before any such amount is applied to make a Distribution on Common Securities on such Distribution Date; and

(iii) if the deficiency in funds results from the Sponsor's failure to pay a full dividend on shares of Preferred Stock on a dividend payment date for the Preferred Stock, then the available funds from the Sponsor's payment of dividends on the Preferred Stock shall be applied first to make Distributions then due on the Preferred HITS on a *pro rata* basis on such Distribution Date up to the amount of such Distributions corresponding to dividends on the Preferred Stock (or, if less, the amount of the corresponding Distributions that would have been made on the Preferred HITS and the Treasury HITS, if any, had the Sponsor paid a full dividend on the Preferred Stock) before any such amount is applied to make a Distribution on Common Securities on such Distribution Date.

(b) If on any Redemption Date for a redemption pursuant to Section 4.2(a) the Paying Agent lacks funds available from the Sponsor's redemption of shares of Preferred Stock to pay the full Redemption Price then due on all of the outstanding Trust Securities to be redeemed in accordance with Section 4.2, then (i) the available funds shall be applied first to pay the Redemption Price on the HITS to be redeemed on such Redemption Date and (ii) Common Securities shall be redeemed only to the extent funds are available for such purpose after the payment of the full Redemption Price on the HITS to be redeemed, as aforesaid.

(c) If an Early Dissolution Event occurs, no Liquidation Distributions shall be made on the Common Securities until full Liquidation Distributions have been made on each Class of HITS in accordance with Section 9.4(d).

(d) In the case of the occurrence of any Event of Default resulting from any Note Event of Default or Preferred Stock Default, the Holders of the Common Securities shall have no right to act with respect to any such Event of Default under this Declaration until the effect of all such Events of Default with respect to the HITS have been cured, waived or otherwise eliminated. Until all such Events of Default under this Declaration with respect to the HITS have been so cured, waived or otherwise eliminated, the Property Trustee shall act solely on behalf of the Holders of the HITS and not on behalf of the Holders of the Common Securities, and only the Holders of the HITS will have the right to direct the Property Trustee to act on their behalf.

Section 4.4 *Payment Procedures.*

Payments of cash Distributions in respect of the HITS shall, subject to the next succeeding sentence, be made by check mailed to the address of the Person entitled thereto as such address shall

appear on the Securities Register or, if the HITS are held by a Clearing Agency, such Distributions shall be made to the Clearing Agency by wire transfer of immediately available funds. A Holder of $1,000,000 or more in aggregate Liquidation Amount of HITS may receive payments of cash Distributions by wire transfer of immediately available funds upon written request to the Property Trustee not later than the 15th calendar day, whether or not a Business Day, before the relevant Distribution Date. Payments in respect of the Common Securities shall be made in such manner as shall be mutually agreed between the Property Trustee, the Paying Agent and the Holders of the Common Securities.

Section 4.5 *Tax Returns and Reports.*

The Regular Trustees shall prepare (or cause to be prepared), at the Sponsor's expense, and file all U.S. federal, state and local tax and information returns and reports required by the Declaration to be filed by or in respect of the Trust. In this regard, the Regular Trustees shall (a) prepare and file (or cause to be prepared and filed) all Internal Revenue Service forms required to be filed in respect of the Trust in each taxable year of the Trust, and (b) prepare and furnish (or cause to be prepared and furnished) to each Holder all Internal Revenue Service forms required to be provided by the Trust. The Regular Trustees shall provide the Sponsor and the Property Trustee with a copy of all such returns and reports promptly after such filing or furnishing. The Trustees shall comply with U.S. federal withholding and backup withholding tax laws and information reporting requirements with respect to any payments to Holders under the Trust Securities.

Section 4.6 *Payment of Expenses of the Trust.*

The Sponsor shall pay to the Trust, and reimburse the Trust for, the full amount of any costs, expenses or liabilities of the Trust (other than obligations of the Trust to pay the Holders of any HITS or other similar interests in the Trust the amounts due such Holders pursuant to the terms of the HITS or such other similar interests, as the case may be), including, without limitation, any taxes, duties or other governmental charges of whatever nature (other than withholding taxes) imposed on the Trust by the United States or any other taxing authority. Such payment obligation includes any such costs, expenses or liabilities of the Trust that are required by applicable law to be satisfied in connection with a dissolution of the Trust.

Section 4.7 *Payments under Indenture or Pursuant to Direct Actions.*

Any amount payable hereunder to any Holder of HITS (or any Owner with respect thereto) shall be reduced by the amount of any corresponding payment such Holder (or Owner) has directly received pursuant to Section 13.13 of the Base Indenture, Section 3.1 of the Stock Purchase Contract Agreement or Section 5.16 of this Declaration.

Section 4.8 *Combination of Treasury HITS and Preferred HITS after Stock Purchase Date.*

If either (x) there has been a Successful Remarketing or (y) there has been a Failed Remarketing but on the Stock Purchase Date there is no Deferred Note Interest Amount outstanding (but in the case of each of clause (x) and (y) only if the Stock Purchase Contract Agreement is fully performed on the Stock Purchase Date), at the Securities Registrar's opening of business on the Business Day next succeeding the Stock Purchase Date each Treasury HITS with its $1,000 Liquidation Amount shall automatically be and become a Preferred HITS with a $1,000 Liquidation Amount, and each Treasury HITS Certificate (whether or not a Book-Entry HITS Certificate) shall be deemed to represent a number of Preferred HITS equal to the number of Treasury HITS represented by such Treasury HITS Certificate immediately prior to the Securities Registrar's opening of business on such date. If there has been a Failed Remarketing and

on the Stock Purchase Date there is a Deferred Note Interest Amount outstanding, then Treasury HITS will continue to remain outstanding after the Stock Purchase Date until the first date on which no Deferred Note Interest Amount is outstanding or the subordinated notes are distributed to the holders of Preferred HITS (including because any notes delivered pursuant to Section 2.7(f) of the Thirteenth Supplemental Indenture have been fully paid) and, on the Business Day after all Deferred Note Interest Amounts have been fully paid, each Treasury HITS with its $1,000 Liquidation Amount shall automatically be and become a Preferred HITS with a $1,000 Liquidation Amount, and each Treasury HITS Certificate (whether or not a Book-Entry HITS Certificate) shall be deemed to represent a number of Preferred HITS equal to the number of Treasury HITS represented by such Treasury HITS Certificate immediately prior to the Securities Registrar's opening of business on such date. On or after such date as determined by this Declaration pursuant to either of the two preceding sentences, (a) upon surrender by a Holder of a Treasury HITS Certificate to the Securities Registrar, a Regular Trustee shall execute and deliver to the Securities Registrar (who shall then deliver to such Holder) a Preferred HITS Certificate representing the appropriate number of Preferred HITS, and the Securities Registrar shall enter such Holder as appropriate in the Securities Register for the Preferred HITS, and (b) as to Preferred HITS and Treasury HITS represented by Book-Entry HITS, the Sponsor, the Regular Trustees, the Property Trustee, the Securities Registrar and the Paying Agent shall cooperate in an effort to cause the Treasury HITS to become Preferred HITS in accordance with the rules and procedures of the applicable Clearing Agency (including, in the case of DTC if it is the Clearing Agency, adjustment if necessary or appropriate through DTC's Deposit/Withdrawal at Custodian DWAC system).

ARTICLE V

TRUST SECURITIES CERTIFICATES

Section 5.1 *Initial Ownership.*

Upon the formation of the Trust and the contribution by the Sponsor pursuant to Section 2.3 and until the issuance of the Trust Securities, and at any time during which no Trust Securities are outstanding, the Sponsor shall be the sole beneficial owner of the Trust.

Section 5.2 *The Trust Securities Certificates.*

The HITS Certificates shall be issued in minimum denominations of one HITS and integral multiples thereof (corresponding to $1,000 Liquidation Amount and integral multiples of $1,000 in excess thereof), and the Common Securities Certificates shall be issued in minimum denominations of one Common Security and integral multiples thereof (corresponding to $1,000 Liquidation Amount and integral multiples thereof). HITS Certificates and Common Securities Certificates shall not be issued in denominations representing fractions of a HITS or Common Security, as applicable. The Trust Securities Certificates shall be executed on behalf of the Trust by manual signature of at least one Regular Trustee and authenticated by manual signature of an authorized officer or other authorized signatory of the Securities Registrar. Trust Securities Certificates bearing the manual signatures of individuals who were, at the time when such signatures shall have been affixed, Regular Trustees shall be validly issued and entitled to the benefits of this Declaration, notwithstanding that such individuals or any of them shall have ceased to be Regular Trustees prior to the delivery of such Trust Securities Certificates or did not hold such offices at the date of delivery of such Trust Securities Certificates. A transferee of a Trust Securities Certificate shall become a Holder, and shall be entitled to the rights and subject to the obligations of a Holder hereunder, upon due registration of such Trust Securities Certificate in such transferee's name pursuant to Section 5.4, 5.11 or 5.13.

Section 5.3 *Execution and Delivery of Trust Securities Certificates.*

At the Time of Delivery, a Regular Trustee shall cause Trust Securities Certificates representing the number of Trust Securities of the applicable Class provided in Sections 2.4 and 2.5 to be executed on behalf of the Trust, authenticated by the Securities Registrar pursuant to a written order of the Trust to be executed by at least one Regular Trustee and delivered to the Property Trustee, or to a designee or custodian of the Property Trustee upon its written order executed by an authorized officer thereof, in denominations authorized by written order of Trust.

Section 5.4 *Registration of Transfer and Exchange of HITS Certificates.*

The Regular Trustees shall keep or cause to be kept, at the office or agency maintained pursuant to Section 5.8, a register or registers for the purpose of registering Trust Securities Certificates and transfers and exchanges of HITS Certificates (the "*Securities Register*") in which the Securities Registrar, subject to such reasonable regulations as it may prescribe, shall provide for the registration of HITS Certificates and Common Securities Certificates (subject to Section 5.10 in the case of the Common Securities Certificates) and registration of transfers and exchanges of HITS Certificates as herein provided. The provisions of Sections 8.1 (other than (c), (d), (e)(i), (e)(iii) and (e)(vii) thereof), 8.3 (other than (g) and (j) thereof) and 8.6 shall apply to the Securities Registrar in the same manner that by their terms they apply to the Property Trustee under the Collateral Agreement. The Regular Trustees shall take such action as shall be necessary to ensure that at all times there is a Securities Registrar and that, through the Stock Purchase Date, the same commercial bank is both Securities Registrar and Collateral Agent. By executing this Declaration, the Regular Trustees appoint The Bank of New York Trust Company, N.A., as the initial Securities Registrar. Subject to the second preceding sentence, the Regular Trustees may dismiss the Securities Registrar and appoint a commercial bank or trust company to act as successor Securities Registrar. Any Person acting as Securities Registrar shall be permitted to resign as Securities Registrar upon 30 days' written notice to the Regular Trustees and the Property Trustee.

Upon surrender for registration of transfer of any HITS Certificate at the office or agency maintained pursuant to Section 5.8, the Regular Trustees or any one of them shall execute on behalf of the Trust and deliver, in the name of the designated transferee or transferees, one or more new HITS Certificates in authorized denominations of a like aggregate Liquidation Amount dated the date of execution by such Regular Trustee or Trustees. At the option of a Holder, HITS Certificates may be exchanged for other HITS Certificates in authorized denominations of the same class and of a like aggregate Liquidation Amount upon surrender of the HITS Certificates to be exchanged at the office or agency maintained pursuant to Section 5.8. Neither the Trust nor the Securities Registrar shall be required, pursuant to the provisions of this Section 5.4, (a) to register the transfer of or exchange any HITS during a period beginning at the opening of business 15 days before the day of selection for redemption of HITS and ending at the close of business on the day of mailing of notice of redemption or (b) to transfer or exchange any HITS so selected for redemption in whole or in part, except, in the case of any HITS to be redeemed in part, any portion thereof not to be redeemed.

Every HITS Certificate presented or surrendered for registration of transfer or exchange shall be accompanied by a written instrument of transfer in form satisfactory to a Regular Trustee and the Securities Registrar duly executed by the Holder or his attorney duly authorized in writing. Each HITS Certificate surrendered for registration of transfer or exchange shall be canceled and subsequently disposed of by a Regular Trustee or the Securities Registrar in accordance with such Person's customary practice.

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

Section 5.5 *Mutilated, Destroyed, Lost or Stolen Trust Securities Certificates.*

If (a) any mutilated Trust Securities Certificate shall be surrendered to the Securities Registrar, or if the Securities Registrar shall receive evidence to its satisfaction of the destruction, loss or theft of any Trust Securities Certificate, and (b) there shall be delivered to the Securities Registrar and the Regular Trustees such security or indemnity as may be required by them to save each of them harmless, then in the absence of notice that such Trust Securities Certificate shall have been acquired by a protected purchaser, the Regular Trustees, or any one of them, on behalf of the Trust shall execute and make available for delivery, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Trust Securities Certificate, a new Trust Securities Certificate of like class, tenor and denomination. In connection with the issuance of any new Trust Securities Certificate under this Section 5.5, the Regular Trustees or the Securities Registrar 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 Trust Securities Certificate issued pursuant to this Section shall constitute conclusive evidence of an undivided beneficial interest in the assets of the Trust corresponding to that evidenced by the lost, stolen or destroyed Trust Securities Certificate, as if originally issued, whether or not the lost, stolen or destroyed Trust Securities Certificate shall be found at any time.

Section 5.6 *Persons Deemed Holders.*

The Trustees and the Securities Registrar shall each treat the Person in whose name any Trust Securities Certificate shall be registered in the Securities Register as the owner of such Trust Securities Certificate for the purpose of receiving Distributions and for all other purposes whatsoever, and none of the Trustees, the Regular Trustees and the Securities Registrar shall be bound by any notice to the contrary.

Section 5.7 *List of Holders' Names and Addresses.*

Each of the Sponsor and any one of the Regular Trustees will furnish or cause to be furnished to the Property Trustee:

(i) monthly, quarterly or semi-annually, as the case may be, not more than 15 days after each regular record date in each year, a list, in such form as the Property Trustee may reasonably require, of the names and addresses of the Holders of Trust Securities as of such regular record date, and

(ii) at such other times as the Property Trustee may request in writing, within 30 days after the receipt by the Sponsor and the Regular Trustees 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,

excluding from any such list names and addresses received by the Property Trustee at any time that is acting as Securities Registrar.

The Property Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Property Trustee as provided in this Section 5.7 and the names and addresses of Holders received by the Property Trustee at any time that is acting as Securities Registrar. The Property Trustee may destroy any list furnished to it as provided in Section 5.7 upon receipt of a new list so furnished.

The rights of Holders to communicate with other Holders with respect to their rights under this Declaration or under the Trust Securities, and the corresponding rights and privileges of the Property Trustee, shall be as provided in the Trust Indenture Act.

Each Holder and each Owner shall be deemed to have agreed not to hold the Sponsor, the Property Trustee, the Delaware Trustee, the Regular Trustees or the Securities Registrar accountable by reason of the disclosure of its name and address, regardless of the source from which such information was derived.

Section 5.8 *Maintenance of Office or Agency.*

The Regular Trustees shall designate an office or offices or agency or agencies where HITS Certificates may be surrendered for registration of transfer or exchange and for payment, and where notices and demands to or upon the Trustees in respect of this Declaration and the Trust Securities Certificates may be served. The Regular Trustees initially designate c/o The Bank of New York Trust Company, N.A., 101 Barclay Street, 8 West, New York, New York, Attention: Corporate Trust Administration, as their office and agency for such purposes of surrendering for registration of transfer or exchange and for payment and designate c/o Bank of America Corporation, NC1-007-07-06, 100 North Tryon Street, Charlotte, North Carolina, 28255, Attention: Corporate Treasury, as their office and agency for the purposes of serving such demands and notices. A Regular Trustee shall give prompt written notice to the Sponsor, the Property Trustees and to the Holders of any change in the location of the Securities Register or any such office or agency.

Section 5.9 *Appointment of Paying Agent.*

The Paying Agent shall make Distributions to Holders from the Payment Account and shall report the amounts of such Distributions to the Property Trustee and the Regular Trustees. Any Paying Agent shall have the revocable power to withdraw funds from the Payment Account solely for the purpose of making the Distributions referred to above. The Regular Trustees may revoke such power and remove the Paying Agent in their sole discretion. The Paying Agent shall initially be The Bank of New York Trust Company, N.A. Any Person acting as Paying Agent shall be permitted to resign as Paying Agent upon 30 days' written notice to the Regular Trustees and the Property Trustee. If The Bank of New York Trust Company, N.A. shall no longer be the Paying Agent or a successor Paying Agent shall resign or its authority to act be revoked, the Regular Trustees shall appoint a successor (which shall be a bank or trust company) that is reasonably acceptable to the Property Trustee and the Sponsor to act as Paying Agent. Such successor Paying Agent or any additional Paying Agent shall execute and deliver to the Trustees an instrument in which such successor Paying Agent or additional Paying Agent shall agree with the Trustees that as Paying Agent, such successor Paying Agent or additional Paying Agent will hold all sums, if any, held by it for payment to the Holders in trust for the benefit of the Holders entitled thereto until such sums shall be paid to such Holders. The Paying Agent shall return all unclaimed funds to the Property Trustee and upon removal of a Paying Agent such Paying Agent shall also return all funds in its possession to the Property Trustee. The provisions of Sections 8.1 (other than (c), (d), (e)(i), (e)(iii) and (e)(vii) thereof), 8.3 (other than (g) and (j) thereof) and 8.6 shall apply also to the Paying Agent for so long as it shall act as Paying Agent and, to the extent applicable, to any other paying agent appointed hereunder, in the same manner that by their terms they apply to the Property Trustee. Any reference in this Agreement to the Paying Agent shall include any co-paying agent unless the context requires otherwise.

Section 5.10 *Ownership of Common Securities by Sponsor; Common Securities Certificate.*

(a) At the Time of Delivery, the Sponsor shall acquire beneficial and record ownership of the Common Securities. To the fullest extent permitted by law, other than a transfer in connection with a consolidation or merger of the Sponsor into another Person, or any conveyance, transfer or lease by the Sponsor of its properties and assets substantially as an entirety to any Person pursuant to Section 10.01 of the Base Indenture, any attempted transfer of the Common Securities other than to a direct or indirect subsidiary of the Sponsor shall be void. The Regular Trustees shall cause each Common Securities Certificate issued to the Sponsor to contain a legend consistent with this Section 5.10.

(b) A single Common Securities Certificate representing the Common Securities shall be issued to the Sponsor in the form of a definitive Common Securities Certificate.

Section 5.11 *Book-Entry HITS Certificates.*

(a) Except where Definitive HITS Certificates have been issued to Owners pursuant to Sections 5.11(d) through 5.11(f) or Section 5.15:

(i) the provisions of this Section 5.11(a) shall apply and be in full force and effect;

(ii) the Securities Registrar, the Paying Agent and the Trustees shall be entitled to deal with the Clearing Agency, or its nominee, for all purposes of this Declaration relating to the Book-Entry HITS Certificates (including the payment of the Liquidation Amount of and Distributions on the HITS evidenced by Book-Entry HITS Certificates and the giving of instructions or directions to Owners of HITS evidenced by Book-Entry HITS Certificates) as the sole Holder of HITS evidenced by Book-Entry HITS Certificates and shall have no obligations to the Owners thereof, and neither any Clearing Agency Participants nor any other Persons on whose behalf Clearing Agency Participants may act shall have any rights under this Declaration with respect to any Book-Entry HITS Certificates registered in the name of the Clearing Agency or any nominee thereof or otherwise;

(iii) to the extent that the provisions of this Section 5.11 conflict with any other provisions of this Declaration, the provisions of this Section 5.11 shall control; and

(iv) the rights of the Owners of the Book-Entry HITS Certificates shall be exercised only through the Clearing Agency and shall be limited to those established by law and agreements between such Owners and the Clearing Agency and/or the Clearing Agency Participants. Unless and until Definitive HITS Certificates are issued pursuant to Sections 5.11(d) through 5.11(f) or Section 5.15, the initial Clearing Agency will make book-entry transfers among the Clearing Agency Participants and receive and transmit payments on the HITS to such Clearing Agency Participants. Notwithstanding the foregoing, (x) the Holder of a Book-Entry HITS Certificate may grant proxies and otherwise authorize any Person, including the Clearing Agency Participants and other Persons that are Owners, to take any action that a Holder of HITS of the relevant Class is entitled to take under this Declaration or the HITS of the relevant Class, and (y) nothing herein shall prevent the Securities Registrar or the Trustees from giving effect to any written certification, proxy or other authorization furnished by the Clearing Agency or shall impair, as between the Clearing Agency and the Clearing Agency Participants, the operation of customary practices governing the exercise of the rights of an Owner of any HITS.

(b) Any Book-Entry HITS Certificate shall represent such number of the Outstanding HITS of the applicable Class as shall be specified therein and may provide that it shall represent the aggregate number of Outstanding HITS of the applicable Class from time to time endorsed thereon and that the

aggregate number of Outstanding HITS of the applicable Class represented thereby may from time to time be reduced or increased, as appropriate, to reflect transfers, redemptions or exchanges (including the Exchanges pursuant to Section 5.13). Any endorsement of a Book-Entry HITS Certificate to reflect the number, or any increase or decrease in the number, of Outstanding HITS of the applicable Class represented thereby shall be made by the Securities Registrar (i) in such a manner and upon instructions given by such Person or Persons as shall be specified in such HITS of the applicable Class or in a Sponsor order to be delivered to the Securities Registrar pursuant to Section 5.3 or (ii) otherwise in accordance with written instructions or such other written form or instructions as is customary for the Clearing Agency for such HITS, from such Clearing Agency or its nominee on behalf of any Person having a beneficial interest in such Book-Entry HITS Certificate. Subject to the provisions of Section 5.4, the Securities Registrar shall deliver and redeliver any Book-Entry HITS Certificate in the manner and upon instructions given by the Person or Persons specified in such Book-Entry HITS Certificate or in the applicable Sponsor order (and a Regular Trustee shall execute such Book-Entry HITS Certificate as shall be necessary in order to give effect to the foregoing).

(c) Any Book-Entry HITS Certificate may be deposited with the Clearing Agency or its nominee, or may remain in the custody of the Certificate Custodian.

(d) Notwithstanding Section 5.4, transfers of a Book-Entry HITS Certificate shall be limited to transfers in whole, but not in part, to the Clearing Agency, its successors or their respective nominees. Interests of Owners in a Book-Entry HITS Certificate may be transferred in accordance with the rules and procedures of the Clearing Agency. Definitive HITS Certificates shall be transferred to Owners in exchange for their beneficial interests in a Book-Entry HITS Certificate if, and only if, either (1) the Clearing Agency notifies the Sponsor and the Securities Registrar that it is unwilling or unable to continue as Clearing Agency for the Book-Entry HITS or if at any time the Clearing Agency ceases to be a Clearing Agency registered under the Exchange Act and, in either case, a successor Clearing Agency is not appointed by the Sponsor within 90 days of such notice, (2) an Event of Default has occurred and is continuing and the Securities Registrar has received a request from the Clearing Agency to issue Definitive HITS Certificates of each Class in lieu of all or a portion of the Book-Entry HITS (in which case a Regular Trustee shall execute and deliver Definitive HITS Certificates within 30 days of such request), or (3) the Sponsor determines not to have the HITS represented by the Book-Entry HITS Certificates.

(e) In connection with any transfer of a portion of the beneficial interests in a Book-Entry HITS Certificate to Owners pursuant to this Section 5.11, the Securities Registrar shall reflect on its books and records the date and a decrease in the number of Book-Entry HITS of the applicable Class in an amount equal to the number of such HITS of the applicable Class to be transferred, and a Regular Trustee shall execute and deliver one or more Definitive HITS Certificates of the same Class representing the appropriate number of HITS of such Class.

(f) In connection with the transfer of all the beneficial interests in a Book-Entry HITS Certificate to Owners pursuant to this Section 5.11, the Book-Entry HITS Certificates shall be deemed to be surrendered to the Securities Registrar for cancellation, and a Regular Trustee shall execute and deliver to each Owner identified by the Clearing Agency in exchange for its beneficial interest in the Book-Entry HITS Certificate being cancelled, a Definitive HITS Certificate representing an equal number of HITS of the applicable Class.

(g) None of the Trustees, the Securities Registrar, the Paying Agent or the Sponsor will have any responsibility or liability for any acts or omissions of any Clearing Agency with respect to any Book-Entry HITS, or any aspect of the records relating to, or payments made on account of, HITS by the

Clearing Agency, or for maintaining, supervising or reviewing any records of the Clearing Agency relating to the HITS, or for any transactions between or among a Clearing Agency and a Clearing Agency Participant and/or an Owner of a beneficial interest in any Book-Entry HITS for transfers of beneficial interests in any Book-Entry HITS. None of the Trustees, the Securities Registrar, the Paying Agent or the Sponsor shall be liable for any delay by the Clearing Agency in identifying Owners, and each such Person may conclusively rely on, and shall be protected in relying on, instructions from the Clearing Agency for all purposes (including with respect to the registration and delivery, in the respective amounts, of Definitive HITS Certificates to be issued).

Section 5.12 *Notices to Clearing Agency.*

To the extent that a notice or other communication to the Holders is required under this Declaration, for so long as HITS are represented by Book-Entry HITS Certificates, the Regular Trustees shall give all such notices and communications specified herein to be given to the Clearing Agency, and shall have no obligations to the Owners.

Section 5.13 *Exchanges.*

(a) This Section 5.13 provides for the procedures pursuant to which Holders:

(i) of Preferred HITS may exchange Preferred HITS and Qualifying Treasury Securities for Treasury HITS and Corporate HITS; and

(ii) of Treasury HITS and Corporate HITS may exchange Treasury HITS and Corporate HITS for Preferred HITS and Qualifying Treasury Securities,

(each, an "*Exchange*", and the terms "*Exchanged*", "*Exchanging*" and "*Exchanges*" having correlative meanings). All deposits, deliveries or transfers by a Holder pursuant to this Section 5.13 of Preferred HITS, Corporate HITS and Qualifying Treasury Securities shall be made by Book-Entry Transfer unless the recipient of such deposit, delivery or transfer expressly agrees otherwise in writing. A Holder who elects to an Exchange pursuant to this Section 5.13 shall be responsible for any fees or expenses associated therewith.

(b) Subject to the conditions set forth in this Declaration, during any Exchange Period a Holder of Preferred HITS may effect an Exchange of Preferred HITS and Qualifying Treasury Securities having a principal amount equal to the Liquidation Amount of such Preferred HITS for Treasury HITS and Corporate HITS, each having a Liquidation Amount equal to the Liquidation Amount of such Preferred HITS, by:

(i) depositing with the Collateral Agent the treasury security that is the Qualifying Treasury Security on the date of deposit, in the principal amount of $1,000 for each Preferred HITS being Exchanged;

(ii) transferring the Preferred HITS being Exchanged to the Securities Registrar; and

(iii) delivering to the Collateral Agent and the Securities Registrar, together with the deposit of Qualifying Treasury Securities deposited pursuant to clause (i) and the transfer of Preferred HITS pursuant to clause (ii), a duly executed and completed "*Splitting Notice and Request*" in the form printed on the reverse side of the form of Preferred HITS Certificate (x) stating that the Holder is depositing the appropriate Qualifying Treasury Securities with the Collateral Agent for deposit in the Collateral Account, (y) stating that the Holder is transferring the related Preferred HITS to the Securities

Registrar in connection with an Exchange of such Preferred HITS and Qualifying Treasury Securities for a Like Amount of Treasury HITS and Corporate HITS, and (z) requesting the delivery to the Holder of such Treasury HITS and Corporate HITS.

(c) Upon the deposit and transfer pursuant to Section 5.13(b) and receipt of the notice and request referred to in Section 5.13(b)(iii):

(i) the Collateral Agent will release Pledged Notes of a Like Amount from the Pledge, transfer such Pledged Notes to the Custody Account free and clear of the Sponsor's security interest therein, and confirm to the Property Trustee in writing that such release and transfer has occurred;

(ii) the Collateral Agent shall continue to hold such Notes in the Custody Account as Custodial Agent for the Trust in connection with Corporate HITS for which such Notes are Corresponding Assets; and

(iii) the Securities Registrar, pursuant to the procedures provided for in Section 5.11 dealing with increasing and decreasing the number of HITS evidenced by Book-Entry HITS Certificates, shall cancel the number of Preferred HITS transferred pursuant to Section 5.13(b)(ii) and deliver a Like Amount of Treasury HITS and Corporate HITS to the Holder, all by making appropriate notations on the Book-Entry HITS Certificates of the appropriate Class.

(d) Subject to the conditions set forth in this Declaration, during any Exchange Period a Holder of Treasury HITS and Corporate HITS may effect an Exchange of Treasury HITS and Corporate HITS for Preferred HITS and Pledged Treasury Securities having a principal amount equal to the Liquidation Amount of each of the Treasury HITS and Corporate HITS being Exchanged, by:

(i) transferring the Treasury HITS and the Corporate HITS being Exchanged to the Securities Registrar; and

(ii) delivering to the Securities Registrar, together with the transfer of Treasury HITS and Corporate HITS pursuant to clause (i), and concurrently delivering to the Collateral Agent a duly executed and completed "*Recombination Notice and Request*" in the form printed on the reverse side of the form of Corporate HITS Certificate and Treasury HITS Certificate, (x) stating that the Holder is transferring the related Treasury HITS and Corporate HITS to the Securities Registrar in connection with the Exchange of such Treasury HITS and Corporate HITS for a Like Amount of each of Preferred HITS and Qualifying Treasury Securities, (y) requesting the Collateral Agent to release from the Pledge and deliver to the Holder Qualifying Treasury Securities in a principal amount equal to the Liquidation Amount of each of the Treasury HITS and Corporate HITS being exchanged, and (z) requesting the Securities Registrar to deliver to the Holder Preferred HITS of a Like Amount.

(e) Upon the transfer pursuant to Section 5.13(d) and receipt of the notice and request referred to in Section 5.13(d)(ii):

(i) the Collateral Agent will release Pledged Treasury Securities of a Like Amount from the Pledge and deliver such formerly Pledged Treasury Securities to the Holder free and clear of the Sponsor's security interest therein, and confirm in writing to the Property Trustee and the Regular Trustees that such release and transfer has occurred;

(ii) the Collateral Agent will transfer a Like Amount of Notes from the Custody Account to the Collateral Account, re-subjecting such Notes to the Pledge; and

(iii) the Securities Registrar, pursuant to the procedures provided for in Section 5.11 dealing with increasing and decreasing the number of HITS evidenced by Book-Entry HITS Certificates, shall cancel the number of Treasury HITS and Corporate HITS delivered pursuant to Section 5.13(d) and deliver a Like Amount of Preferred HITS to the Holder, all by making appropriate notations on the Book-Entry HITS Certificates of the appropriate Class.

Section 5.14 *Remarketing Elections.*

(a) This Section 5.14 provides for the procedures pursuant to which a Holder:

(i) of Preferred HITS may elect (a "*Contingent Exchange Election*") to cause the Pledged Notes that are Corresponding Assets for such Holder's Preferred HITS not to be offered in a Remarketing, with the consequence that such Holder will receive in exchange Treasury HITS and Corporate HITS in a Like Amount if the Remarketing is Successful; and

(ii) of Corporate HITS may elect (a "*Contingent Disposition Election*") to cause the Notes that are Corresponding Assets for such Holder's Corporate HITS to be offered in the Remarketing, with the consequence that such Holder will receive the cash proceeds, net of the allocable portion of the Remarketing Agent's fee, of the Remarketing of such Notes if the Remarketing is Successful.

(b) Upon the written instruction of the Sponsor, the Property Trustee shall give appropriate instructions to the Collateral Agent and the Remarketing Agent in accordance with the Remarketing Agreement to offer for sale in each Remarketing, and if the Remarketing is Successful sell as part of such Remarketing, a principal amount of Notes equal to 100% of the principal amount of Notes included in the Trust Property *minus* the sum of (i) the Liquidation Amount of Preferred HITS as to which a Contingent Exchange Election has been made and (ii) the Liquidation Amount of Corporate HITS other than Corporate HITS as to which a Contingent Disposition Election has been made.

(c) All deposits, deliveries or transfers by a Holder pursuant to this Section 5.14 of Preferred HITS, Corporate HITS and treasury securities (including Qualifying Treasury Securities) shall be made by Book-Entry Transfer unless the recipient of such deposit, delivery or transfer expressly agrees otherwise in writing.

(d) Subject to the conditions set forth in this Declaration, a Holder of Preferred HITS may make a Contingent Exchange Election by:

(i) during the period that commences with the Collateral Agent's and the Securities Registrar's opening of normal business hours on the tenth Business Day immediately preceding the first day of a Remarketing Period and ending at 3:00 p.m., New York City time, on the second Business Day immediately preceding the first day of such Remarketing Period, transferring the Preferred HITS that are the subject of such Contingent Exchange Election to the Securities Registrar, accompanied by a duly executed and completed *"Notice of Contingent Exchange Election"* in the form printed on the reverse side of the form of Preferred HITS Certificate; and

(ii) by not later than 3:00 p.m., New York City time, on the second Business Day immediately preceding the first day of such Remarketing Period, depositing with the Collateral Agent the treasury security that is the Qualifying Treasury Security on the date of deposit, in the amount of $1,000 for each Preferred HITS that is subject to the Contingent Exchange Election.

(e) If a Holder has made an effective Contingent Exchange Election in accordance with the foregoing provisions:

(i) if the related Remarketing is Successful:

(w) the Collateral Agent shall (A) instruct the Securities Intermediary to release from the Pledge and deliver to the Remarketing Agent the Pledged Notes for which no election has been validly made pursuant to Section 8.02(a) of the Collateral Agreement, free and clear of the Corporation's security interest therein, against delivery by the Remarketing Agent of Qualifying Treasury Securities purchased with the net Proceeds of the sale of such Pledged Notes in the Remarketing for deposit in the Collateral Account, (B) instruct the Securities Intermediary to release from the Pledge and (C) Transfer to the Custody Account the Pledged Notes for which an election has been validly made pursuant to Section 8.02(a) of the Collateral Agreement, free and clear of the Sponsor's security interest therein, upon delivery by the Collateral Agent to the Securities Intermediary for deposit into the Collateral Account the Qualifying Treasury Securities to be deposited in connection with such elections, and confirm to the Property Trustee in writing that such instructions have been delivered;

(x) the Securities Intermediary will (A) release the Pledged Notes from the Pledge, Transfer such Pledged Notes, free and clear of the Pledge, (x) to the Remarketing Agent in the case of Pledged Notes for which no election has been validly made pursuant to Section 8.02(a) of the Collateral Agreement and (y) to the Custody Account in the case of Pledged Notes for which an election has been validly made pursuant to Section 8.02(a) of the Collateral Agreement, (B) deposit in the Collateral Account as Pledged Treasury Securities the Qualifying Treasury Securities deposited with the Collateral Agent pursuant to Section 8.02(a) of the Collateral Agreement or delivered by the Remarketing Agent and (C) confirm to the Property Trustee in writing that such release, Transfer and deposit have occurred;

(y) the Custodial Agent shall hold such Notes delivered to it pursuant to clause (ii)(y) of this Section 8.02(b) of the Collateral Agreement in the Custody Account; and

(z) the Securities Registrar shall cancel the number of Preferred HITS Transferred pursuant to Section 8.02(a) of the Collateral Agreement and deliver a Like Amount of Corporate HITS and Treasury HITS to the Holder in accordance with the procedures provided for in this Section 5.14.

(ii) if the related Remarketing is not Successful:

(x) as soon as reasonably practicable after the Remarketing, the Collateral Agent will deliver back to such Holder the Qualifying Treasury Securities delivered by such Holder to the Collateral Agent pursuant to Section 8.02(a) of the Collateral Agreement; and

(y) the Securities Registrar will disregard the delivery by such Holder of Preferred HITS pursuant to Section 8.02(a) of the Collateral Agreement, with the consequence that such Holder shall be deemed to continue to hold such Preferred HITS.

(f) Subject to the conditions set forth in this Declaration, a Holder of Corporate HITS may make a Contingent Disposition Election by, during the period that commences with the Securities Registrar's opening of normal business hours on the tenth Business Day immediately preceding the first day of a Remarketing Period and ending at 3:00 p.m., New York City time, on the second Business Day immediately preceding the first day of such Remarketing Period, transferring the Corporate HITS that are the subject of such Contingent Disposition Election to the Securities Registrar, accompanied by a duly completed "*Notice of Contingent Disposition Election*" in the form printed on the reverse side of the form of Corporate HITS Certificate to the Securities Registrar and the Custodial Agent.

(g) If a Holder has made an effective Contingent Disposition Election in accordance with the foregoing provisions:

(i) if the related Remarketing is Successful:

(x) the Securities Registrar shall cancel the number of Corporate HITS Transferred pursuant to Section 8.03(a) of the Collateral Agreement in accordance with the procedures provided for in Section 5.11;

(y) the Custodial Agent shall deliver Custody Notes in the aggregate principal amount with respect to which elections have been validly made pursuant to Section 8.03(a) of the Collateral Agreement to the Remarketing Agent on the Remarketing Settlement Date; and

(z) on or promptly after the Remarketing Settlement Date, the Custodial Agent will pay to the Property Trustee the net Proceeds of the Custody Notes received from the Remarketing Agent.

(ii) if the Remarketing is not Successful, the Securities Registrar will disregard the delivery by such Holder of Corporate HITS pursuant to Section 5.14(f), with the consequence that such Holder shall be deemed to have continued to hold such Corporate HITS.

Section 5.15 *Definitive HITS Certificates.*

The HITS Certificates issued at the Time of Delivery shall be issued as Book-Entry HITS Certificates in accordance with Section 2.4. Additionally, if (a) the Sponsor advises the Trustees in writing that the Clearing Agency (i) has notified the Sponsor that it is unwilling or unable to continue as Clearing Agency for such HITS Certificates and no successor Clearing Agency has been appointed within 90 days of this notice or (ii) has ceased to be a clearing agency registered under the Exchange Act at a time when the Clearing Agency is required to be so registered to act as a depositary and no successor Clearing Agency has been appointed within 90 days after the Sponsor has learned that the Clearing Agency has ceased to be so registered, (b) an Event of Default has occurred and is continuing and the Securities Registrar has received a request from the Clearing Agency to issue Definitive HITS Certificates for each applicable Class, (c) the Sponsor at its option advises the Trustees in writing that it elects to terminate the book-entry system through the Clearing Agency, or (d) Owners of HITS Certificates representing beneficial interests aggregating at least a Majority in Liquidation Amount of the HITS of all Classes, considered together as a single Class, advise the Regular Trustees in writing that the continuation of a book-entry system through the Clearing Agency is no longer in the best interest of the Owners of HITS Certificates, then the Regular Trustees shall notify the other Trustees and the Clearing Agency, and the Clearing Agency, in accordance with its customary rules and procedures, shall notify all Clearing Agency Participants for whom it holds HITS of the occurrence of any such event and of the availability of the Definitive HITS Certificates to Owners of such class or classes, as applicable, requesting the same.

Upon surrender to the Regular Trustees of the typewritten HITS Certificate or Certificates representing the Book-Entry HITS Certificates by the Clearing Agency, accompanied by registration instructions, the Regular Trustees, or any one of them, shall execute the Definitive HITS Certificates in accordance with the instructions of the Clearing Agency. Neither the Securities Registrar nor the Trustees shall be liable for any delay in delivery of such instructions and may conclusively rely on, and shall be protected in relying on, such instructions. Upon the issuance of Definitive HITS Certificates, the Trustees shall recognize the Holders of the Definitive HITS Certificates as holders of Trust Securities. The Definitive HITS Certificates shall be typewritten, printed, lithographed or engraved or may be produced in any other manner as is reasonably acceptable to the Regular Trustees that meets the requirements of any stock exchange or automated quotation system on which the HITS are then listed or approved for trading, as evidenced by the execution thereof by the Regular Trustees or any one of them.

Section 5.16 *Rights of Holders; Waivers of Past Defaults.*

(a) The legal title to the Trust Property is vested exclusively in the Property Trustee (in its capacity as such) in accordance with Section 2.9, and the Holders shall not have any right or title therein other than the beneficial interest in the Trust conferred by their Trust Securities and they shall have no right to call for any partition or division of property, profits or rights of the Trust except as described below. The Trust Securities shall be personal property giving only the rights specifically set forth therein and in this Declaration. The HITS shall have no preemptive or similar rights and when issued and delivered to Holders against payment of the purchase price therefor will be fully paid and nonassessable beneficial interests in the Trust. The Holders of the Trust Securities, in their capacities as such, shall be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware.

(b) For so long as any HITS of the Affected Classes remain Outstanding, if, upon a Note Event of Default, the Note Trustee fails or the holders of not less than 25% in principal amount of the outstanding Notes fail to declare the principal of all of the Notes to be immediately due and payable, the Property Trustee or the Holders of at least 25% in Liquidation Amount of the HITS of the Affected Classes then Outstanding, considered together as a single Class, shall have the right to make such declaration by a notice in writing to the Sponsor, the Note Trustee and the Property Trustee, in the case of notice by the Holders of the HITS of the Affected Classes, or to the Sponsor, the Note Trustee and the Holders of the HITS of the Affected Classes, in the case of notice by the Property Trustee, and upon any such declaration such principal amount of and the accrued interest on all of the Notes shall become immediately due and payable as provided in the Indenture, *provided* that the payment of principal and interest on such Notes shall remain subordinated to the extent provided in the Indenture.

At any time after a declaration of acceleration with respect to the Notes has been made and before a judgment or decree for payment of the money due has been obtained by the Note Trustee as in the Indenture provided, the Holders of at least a Majority in Liquidation Amount of the HITS of the Affected Classes, considered together as a single Class, by written notice to the Property Trustee, the Sponsor and the Note Trustee, may rescind and annul such declaration and its consequences if:

(i) the Sponsor has paid or deposited with the Note Trustee a sum sufficient to pay

(A) all overdue installments of interest on all of the Notes,

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

(C) all sums paid or advanced by the Note Trustee under the Indenture and the reasonable compensation, expenses, disbursements and advances of the Note Trustee and the Property Trustee, their agents and counsel; and

(ii) all Note Events of Default, other than the nonpayment of the principal of the Notes that has become due solely by such acceleration, have been cured or waived as provided in Section 5.07 of the Base Indenture.

The Holders of at least a Majority in Liquidation Amount of the HITS of the Affected Classes, considered together as a single Class, may, on behalf of the Holders of all the HITS of the Affected Classes, waive any past default under the Indenture, except a default in the payment of principal or interest (unless such default has been cured and a sum sufficient to pay all matured installments of interest and principal due otherwise than by acceleration has been deposited with the Note Trustee) or a default in respect of a covenant or provision that under the Indenture cannot be modified or amended without the consent of the holder of each outstanding Note. No such rescission shall affect any subsequent default or impair any right consequent thereon.

Upon receipt by the Property Trustee of written notice declaring such an acceleration, or rescission and annulment thereof, by Holders of any part of the HITS of the Affected Classes a record date shall be established for determining Holders of Outstanding HITS of the Affected Classes entitled to join in such notice, which record date shall be at the close of business on the day the Property Trustee receives such notice. The Holders on such record date, or their duly designated proxies, and only such Persons, shall be entitled to join in such notice, whether or not such Holders remain Holders after such record date; *provided* that unless such declaration of acceleration, or rescission and annulment, as the case may be, shall have become effective by virtue of the requisite percentage having joined in such notice prior to the day that is 90 days after such record date, such notice of declaration of acceleration, or rescission and annulment, as the case may be, shall automatically and without further action by any Holder be canceled and of no further effect. Nothing in this paragraph shall prevent a Holder, or a proxy of a Holder, from giving, after expiration of such 90-day period, a new written notice of declaration of acceleration, or rescission and annulment thereof, as the case may be, that is identical to a written notice that has been canceled pursuant to the proviso to the preceding sentence, in which event a new record date shall be established pursuant to the provisions of this Section 5.16(b).

(c) For so long as any HITS of the Affected Classes remain Outstanding, to the fullest extent permitted by law and subject to the terms of this Declaration and the Indenture, upon a Note Event of Default, any Holder of HITS of the Affected Classes shall have the right to institute a proceeding directly against the Sponsor, pursuant to Section 13.13 of the Base Indenture, for enforcement of payment to such Holder of any amounts payable in respect of a Like Amount of Notes (a "*Direct Action*"). Except as set forth in Section 5.16(b) and this Section 5.16(c), the Holders of HITS of the Affected Classes shall have no right to exercise directly any right or remedy available to the holders of, or in respect of, the Notes.

(d) For so long as any HITS of the Affected Classes remain Outstanding, to the fullest extent permitted by law and subject to the terms of this Declaration and the Stock Purchase Contract Agreement, if the Sponsor fails to pay when due any Contract Payments under the Stock Purchase Contract Agreement (after giving effect to the Sponsor's deferral right under Section 2.7 of the Stock Purchase Contract Agreement), any Holder of HITS of the Affected Classes shall have the right to institute a proceeding directly against the Sponsor, pursuant to Section 3.1 of the Stock Purchase Contract Agreement, for enforcement of payment to such Holder of any amounts payable in respect of a Like Amount of Stock Purchase Contracts (also a "*Direct Action*"). Except as set forth in this Section 5.16(d), the Holders of HITS of the Affected Classes shall have no right to exercise directly any right or remedy under the Stock Purchase Contract Agreement available to the Trust (acting through the Property Trustee) as a party thereto.

(e) Except as otherwise provided in Sections 5.16(a), (b), (c) and (d), the Holders of at least a Majority in Liquidation Amount of the HITS may, on behalf of the Holders of all the HITS, waive any past default or Event of Default and its consequences. Upon such waiver, any such default or Event of Default shall cease to exist, and any default or Event of Default arising there from 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 or impair any right consequent thereon.

Section 5.17 *CUSIP Numbers.*

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

Section 5.18 *Remarketing Procedures.*

(a) The Sponsor will give notice to the Property Trustee of a Remarketing at least 28 days prior to the first day of the related Remarketing Period. Upon written instruction of the Sponsor, the Property Trustee will give holders of Preferred HITS and Corporate HITS, and will request that the Clearing Agency give to its participants holding Preferred HITS or Corporate HITS, notice of a Remarketing at least 21 days prior to the first day of the related Remarketing Period. Such notices will set forth:

(i) the beginning and ending dates of the Remarketing Period and the applicable Remarketing Settlement Date and Stock Purchase Date in the event the Remarketing is successful;

(ii) for interest periods for the Notes commencing on or after the Remarketing Settlement Date, the applicable interest payment dates and related record dates;

(iii) any change in the stated maturity date of the Notes and, if applicable, the date on and after which the Sponsor will have the right to redeem the Notes (which is subject to Sections 3.2 and 3.3 of the Thirteenth Supplemental Indenture);

(iv) whether in connection with an Early Remarketing that is not the first scheduled Remarketing, the Sponsor's obligations under the Notes will remain subordinated to Senior Obligations (as defined in the Thirteenth Supplemental Indenture) after the Remarketing Settlement Date and, if not, whether the interest deferral provisions of the Notes will continue to apply to the Notes after the Remarketing Settlement Date;

(v) any other changes in the terms of the Notes notified by the Sponsor in connection with such Remarketing pursuant to Section 3.2 of the Thirteenth Supplemental Indenture (including on a Final Remarketing that is a Failed Remarketing, any change in the Maturity Date (as defined in the Thirteenth Supplemental Indenture) and, if applicable, the date on or after which the Trust will have the right to redeem the Notes (which is subject to Section 3.2 of the Thirteenth Supplemental Indenture));

(vi) the procedures a Holder of Preferred HITS must follow to elect to exchange its Preferred HITS for Treasury HITS and Corporate HITS if the Remarketing is Successful, and the date by which such election must be made; and

(vii) the procedures a Holder of Corporate HITS must follow to elect to dispose of its Corporate HITS in connection with a Remarketing and the date by which such election must be made.

ARTICLE VI

ACTS OF HOLDERS; MEETINGS; VOTING

Section 6.1 *Limitations on Voting Rights.*

(a) Except as expressly provided in this Declaration and in the Indenture and as otherwise required by law, no Holder of HITS shall have any right to vote or in any manner otherwise control the administration, operation and management of the Trust or the obligations of the parties hereto, nor shall anything herein set forth, or contained in the terms of the Trust Securities Certificates, be construed so as to constitute the Holders from time to time as partners or members of an association.

(b) So long as any Notes are held by the Property Trustee on behalf of the Trust, the Trustees shall not (i) direct the time, method and place of conducting any proceeding for any remedy available to the Note Trustee, or execute any trust or power conferred on the Note Trustee with respect to the Notes, (ii) waive any past default that may be waived under Section 5.07 of the Base Indenture, (iii) exercise any right to rescind or annul a declaration that the principal of all the Notes shall be due and payable, or (iv) consent to any amendment, modification or termination of the Indenture or the Notes, where such consent shall be required by the holders of the Notes pursuant to the terms of the Indenture, without, in each case, obtaining the prior approval of the Holders of at least a Majority in Liquidation Amount of the Preferred HITS and the Corporate HITS then Outstanding, considered together as a single Class; *provided*, *however*, that where a consent under the Indenture would require the consent of each holder of Notes affected thereby, no such consent shall be given by the Property Trustee without the prior written consent of each Holder of Preferred HITS and Corporate HITS. The Property Trustee shall not revoke any action previously authorized or approved by a vote of the Holders of the Preferred HITS and the Corporate HITS, except by a subsequent vote of the Holders of the Preferred HITS and the Corporate HITS. The Property Trustee shall notify all Holders of the Preferred HITS and the Corporate HITS of any notice of default received with respect to the Notes. In addition to obtaining the foregoing approvals of the Holders of the Preferred HITS and the Corporate HITS, prior to taking any of the foregoing actions, the Regular Trustees shall, at the expense of the Sponsor, obtain an Opinion of Counsel experienced in such matters to the effect that such action shall not cause the Trust to be classified as an association or a publicly traded partnership taxable as a corporation for U.S. federal income tax purposes.

(c) For so long as any Stock Purchase Contracts are outstanding, the Trustees may consent to any amendment to or modification of the Stock Purchase Contract Agreement or the Collateral Agreement, without having obtained the prior approval of the Holders of any HITS to such amendment or modification, for the purposes of (i) evidencing the succession of another person to the Trust's or the Property Trustee's obligations thereunder, (ii) adding to the covenants therein for the benefit of the Trust or the Property Trustee or to surrender any of the Sponsor's rights or powers thereunder, (iii) evidencing and providing for the acceptance of appointment of a successor Collateral Agent, Custodial Agent or Securities Intermediary under the Collateral Agreement, (iv) curing any ambiguity, or correcting or supplementing any provisions that may be inconsistent, (v) conforming the terms of the Stock Purchase Contract Agreement or the Collateral Agreement, to the descriptions thereof in the Prospectus, or (vi) making any other provisions with respect to such matters or questions, *provided* that such action

pursuant to clauses (iv) and (vi) shall not adversely affect the interest of the Holders of HITS of any Class in any material respect. The Trustees may, with the consent of the Holders of not less than a Majority in Liquidation Amount of the Preferred HITS and Treasury HITS then Outstanding, considered together as a single Class, agree to any other amendment to or modification of the Stock Purchase Contract Agreement or the Collateral Agreement, except that, without obtaining the prior written consent of each Holder of Preferred HITS and Treasury HITS then Outstanding, the Trustees may not agree to any amendment or modification that would (A) change any payment dates for Contract Payments, (B) change the amount or type of Pledged Notes or Pledged Treasury Securities required to be pledged under the Collateral Agreement, impair the right of the Property Trustee (on behalf of the Trust) to receive distributions on Pledged Notes or Pledged Treasury Securities or otherwise adversely affect the Trust's rights in or to the Pledged Notes or Pledged Treasury Securities, (C) change the place or currency or reduce any Contract Payments, (D) impair the Property Trustee's right (or any Holder's right pursuant to Section 5.16(d)) to institute suit for the enforcement of the Stock Purchase Contracts or payment of any Contract Payments, or (E) reduce the number of shares of Preferred Stock purchasable under the Stock Purchase Contracts, increase the price to purchase Preferred Stock upon settlement of the Stock Purchase Contracts, change the Stock Purchase Date or otherwise adversely affect the Trust's rights under the Stock Purchase Contracts.

(d) So long as any shares of Preferred Stock are held by the Property Trustee on behalf of the Trust, the Trustees shall not waive any Preferred Stock Default without obtaining the prior approval of the Holders of at least a Majority in Liquidation Amount of the Preferred HITS and the Treasury HITS then Outstanding, considered together as a single Class. Additionally, in addition to and notwithstanding the foregoing, the Trustees shall not consent to any amendment to the Certificate of Designations or the Sponsor's certificate of incorporation that would change the dates on which dividends are payable on the Preferred Stock or the amount of such dividends, without the prior written consent of each Holder of Preferred HITS and Treasury HITS. In addition to obtaining the foregoing approvals of the Holders of Preferred HITS and Treasury HITS, prior to taking any of the foregoing actions, the Regular Trustees shall, at the expense of Sponsor, obtain an Opinion of Counsel experienced in such matters to the effect that such action shall not cause the Trust to be classified as an association or a publicly traded partnership taxable as a corporation for U.S. federal income tax purposes.

(e) If any proposed amendment to or modification of the Declaration, the Stock Purchase Contract Agreement or the Collateral Agreement provides for, or the Trustees otherwise propose to effect, any action that would adversely affect in any material respect the powers, preferences or special rights of the HITS of any Class in a manner that is different from the manner in which it would affect the HITS of other Classes, whether by way of amendment to or modification of the Declaration, the Stock Purchase Contract Agreement or the Collateral Agreement or otherwise, then the Holders of the Outstanding HITS of such 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 the Holders of at least a Majority in Liquidation Amount of the HITS of such Class.

(f) No amendment to or modification of any Transaction Document that adversely affects the rights, duties or immunities of the Securities Registrar, the Paying Agent, the Collateral Agent, the Securities Intermediary or the Custodial Agent shall be effective as against any such affected party without its consent.

Section 6.2 *Notice of Meetings.*

Notice of all meetings of the Holders of the HITS of any one or more Classes, stating the time, place and purpose of the meeting, shall be given by the Property Trustee pursuant to Section 12.8 to each

Holder of HITS of each Class entitled to attend such meeting, at such Holder's registered address, at least 15 days and not more than 90 days before the meeting. At any such meeting, any business properly before the meeting may be so considered whether or not stated in the notice of the meeting. Any adjourned meeting may be held as adjourned without further notice.

Section 6.3 *Meetings of Holders of the HITS.*

No annual meeting of Holders is required to be held. However, the Property Trustee or the Regular Trustees shall call a meeting of the Holders of the HITS of a Class to vote on any matter upon the written request of the Holders of at least 25% in aggregate Liquidation Amount of the Outstanding HITS of such Class; the Property Trustee or the Regular Trustees shall call a meeting of the Holders of the HITS of all Classes to vote on any matter upon the written request of the Holders of at least 25% in aggregate Liquidation Amount of the Outstanding HITS of all Classes, considered together; and the Regular Trustees or the Property Trustee may, at any time in their discretion, call a meeting of the Holders of the HITS of any Class or Classes to vote on any matters as to which such Holders are entitled to vote.

The Holders of at least a Majority in Liquidation Amount of the HITS of the Class or Classes (as applicable) entitled to attend a meeting, present in person or by proxy, shall constitute a quorum at any meeting of the Holders of the HITS.

If a quorum is present at a meeting, an affirmative vote by the Holders present, in person or by proxy, holding HITS representing at least a Majority in Liquidation Amount of the HITS of the Class or Classes (as applicable) entitled to attend such meeting held by the Holders present, either in person or by proxy, at such meeting shall constitute the action of the Holders of the HITS of the Class or Classes (as applicable) invited to attend such meeting, unless this Declaration requires a greater number of affirmative votes.

Section 6.4 *Voting Rights.*

Holders shall be entitled to one vote for each $1,000 of Liquidation Amount represented by their Outstanding Trust Securities in respect of any matter as to which such Holders are entitled to vote.

Section 6.5 *All Votes Must Be Made by a United States Person.*

Voting and consensual rights available to or in favor of Holders or Owners under this Declaration may be exercised only by a United States Person that is a beneficial owner of a Trust Security or by a United States Person acting as irrevocable agent with discretionary powers for the beneficial owner of a Trust Security that is not a United States Person. Holders that are not United States Persons must irrevocably appoint a United States Person with discretionary powers to act as their agent with respect to such voting and consensual rights.

Section 6.6 *Proxies, Etc.*

At any meeting of Holders, any Holder entitled to vote thereat may vote by proxy, *provided* that no proxy shall be voted at any meeting unless it shall have been placed on file with the Property Trustee, or with such other officer or agent of the Trust as the Property Trustee may direct, for verification prior to the time at which such vote shall be taken. Pursuant to a resolution of the Property Trustee, proxies may be solicited in the name of the Property Trustee or one or more officers of the Property Trustee. Only Holders of record shall be entitled to vote. When Trust Securities are held jointly by several Persons, any one of them may vote at any meeting in person or by proxy in respect of such Trust Securities, but if more

than one of them shall be present at such meeting in person or by proxy, and such joint owners or their proxies so present disagree as to any vote to be cast, such vote shall not be received in respect of such Trust Securities. A proxy purporting to be executed by or on behalf of a Holder shall be deemed valid unless challenged at or prior to its exercise, and the burden of proving invalidity shall rest on the challenger. No proxy shall be valid more than three years after its date of execution.

Section 6.7 *Holder Action by Written Consent.*

Any action that may be taken by Holders at a meeting may be taken without a meeting and without prior notice if Holders holding at least a Majority in Liquidation Amount of all HITS entitled to vote in respect of such action (or such larger proportion thereof as shall be required by any other provision of this Declaration) shall consent to the action in writing.

Section 6.8 *Record Date for Voting and Other Purposes.*

For the purposes of determining the Holders who are entitled to notice of and to vote at any meeting or by written consent, or to participate in any distribution on the Trust Securities in respect of which a record date is not otherwise provided for in this Declaration, or for the purpose of any other action, the Regular Trustees may from time to time fix a date, not more than 90 days prior to the date of any meeting of Holders or the payment of a Distribution or other action, as the case may be, as a record date for the determination of the identity of the Holders of record for such purposes. The Regular Trustees shall cause a notice of any such date fixed in respect of any such distribution to be forwarded to each Paying Agent.

Section 6.9 *Acts of Holders.*

Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Declaration to be given, made or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as otherwise expressly provided herein, such action shall become effective when such instrument or instruments are delivered to the Property Trustee and the Regular Trustees. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "*Act*" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Declaration and (subject to Section 8.1) conclusive in favor of the Trustees, if made in the manner provided in this Section.

The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that any Trustee receiving the same deems sufficient.

The ownership of Trust Securities shall be proved by the Securities Register.

Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Trust Security shall bind every future Holder of the same Trust Security and the Holder of every Trust Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustees, or the Trust in reliance thereon, whether or not notation of such action is made upon such Trust Security.

Without limiting the foregoing, a Holder entitled hereunder to take any action hereunder with regard to any particular Trust Security may do so with regard to all or any part of the Liquidation Amount of such Trust Security or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any part of such Liquidation Amount.

If any dispute shall arise between the Holders and the Trustees or among the Holders or the Trustees with respect to the authenticity, validity or binding nature of any request, demand, authorization, direction, consent, waiver or other Act of such Holder or Trustee under this Article VI, then the determination of such matter by the Property Trustee shall be conclusive with respect to such matter.

Section 6.10 *Inspection of Records.*

Upon reasonable notice to the Regular Trustees and the Property Trustee, the records of the Trust shall be open to inspection by Holders during normal business hours for any purpose reasonably related to such Holder's interest as a Holder.

ARTICLE VII

REPRESENTATIONS AND WARRANTIES

Section 7.1 *Representations and Warranties of the Property Trustee and the Delaware Trustee.*

The Property Trustee and the Delaware Trustee, each severally on behalf of and as to itself, hereby represents and warrants for the benefit of the Sponsor and the Holders that:

(a) the Property Trustee is a banking corporation, duly organized, validly existing and in good standing under the laws of the State of New York;

(b) the Property Trustee has full corporate power, authority and legal right to execute, deliver and perform its obligations under this Declaration and has taken all Declaration necessary action to authorize the execution, delivery and performance by it of this Declaration;

(c) the Delaware Trustee is a banking corporation, duly organized, validly existing and in good standing under the laws of the State of Delaware;

(d) the Delaware Trustee has full corporate power, authority and legal right to execute, deliver and perform its obligations under this Declaration and has taken all necessary action to authorize the execution, delivery and performance by it of this Declaration (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein);

(e) this Declaration has been duly authorized, executed and delivered by the Property Trustee and the Delaware Trustee and constitutes the valid and legally binding agreement of each of the Property Trustee and the Delaware Trustee enforceable against each of them in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles;

(f) the execution, delivery and performance of this Declaration have been duly authorized by all necessary corporate or other action on the part of the Property Trustee and the Delaware Trustee and do not require any approval of stockholders of the Property Trustee and the Delaware Trustee and such execution, delivery and performance will not (i) violate the charter or by-laws of the Property Trustee or the Delaware Trustee, (ii) violate any provision of, or constitute, with or without notice or lapse of time, a default under, or result in the creation or imposition of, any Lien on any properties included in the Trust Property pursuant to the provisions of, any indenture, mortgage, credit agreement, license or other agreement or instrument to which the Property Trustee or the Delaware Trustee is a party or by which it is bound (other than the Lien on the Trust Property pursuant to the Collateral Agreement), or (iii) violate any law, governmental rule or regulation of the State of Delaware, governing the banking or trust powers of the Property Trustee or the Delaware Trustee (as appropriate in context) or any order, judgment or decree applicable to the Property Trustee or the Delaware Trustee;

(g) neither the authorization, execution or delivery by the Property Trustee or the Delaware Trustee of this Declaration nor the consummation of any of the transactions by the Property Trustee or the Delaware Trustee (as the case may be) contemplated herein requires the consent or approval of, the giving of notice to, the registration with or the taking of any other action with respect to any governmental authority or agency under any existing law of the State of Delaware, governing the banking, trust or general powers of the Property Trustee or the Delaware Trustee (as appropriate in context), other than the filing of the Certificate of Trust with the Delaware Secretary of State; and

(h) there are no proceedings pending or, to the best of each of the Property Trustee's and the Delaware Trustee's knowledge, threatened against or affecting the Property Trustee or the Delaware Trustee in any court or before any governmental authority, agency or arbitration board or tribunal that, individually or in the aggregate, would materially and adversely affect the Trust or would question the right, power and authority of the Property Trustee or the Delaware Trustee, as the case may be, to enter into or perform its obligations as one of the Trustees under this Declaration.

Section 7.2 *Representations and Warranties of Sponsor.*

The Sponsor hereby represents and warrants for the benefit of the Holders that:

(a) the Trust Securities Certificates issued at the Time of Delivery on behalf of the Trust have been duly authorized and will have been duly and validly executed, issued and delivered by the Trustees pursuant to the terms and provisions of, and in accordance with the requirements of, this Declaration, and the Holders will be, as of such date, entitled to the benefits of this Declaration; and

(b) there are no taxes, fees or other governmental charges payable by the Trust (or the Trustees on behalf of the Trust) under the laws of the State of Delaware or any political subdivision thereof in connection with the execution, delivery and performance by any Trustee of this Declaration.

ARTICLE VIII

THE TRUSTEES

Section 8.1 *Certain Duties and Responsibilities.*

(a) The duties and responsibilities of the Trustees shall be as provided by this Declaration, subject to Section 12.10. Notwithstanding the foregoing, no provision of this Declaration shall require any of the Trustees to expend or risk its or their own funds or otherwise incur any financial liability in the performance of any of its or their duties hereunder, or in the exercise of any of its or their rights or

powers, if it or they shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. Whether or not therein expressly so provided, every provision of this Declaration relating to the conduct or affecting the liability of or affording protection to the Trustees shall be subject to the provisions of this Section 8.1. To the extent that, at law or in equity, a Trustee has duties and liabilities relating to the Trust or to the Holders, such Trustee shall not be liable to the Trust or to any Holder for such Trustee's good faith reliance on the provisions of this Declaration. Except as otherwise required by the Trust Indenture Act and the Commission's rules thereunder applicable to indentures qualified under such Act, the provisions of this Declaration, to the extent that they restrict the duties and liabilities of the Trustees otherwise existing at law or in equity, are agreed by the Sponsor and the Holders to replace such other duties and liabilities of the Trustees.

(b) All payments made by the Property Trustee or a Paying Agent in respect of the Trust Securities shall be made only from the revenue and proceeds from the Trust Property and only to the extent that there shall be sufficient revenue or proceeds from the Trust Property to enable the Property Trustee or a Paying Agent to make payments in accordance with the terms hereof. Each Holder, by its acceptance of a Trust Security, agrees that it will look solely to the revenue and proceeds from the Trust Property to the extent legally available for distribution to it as herein provided and that the Trustees are not personally liable to such Holder for any amount distributable in respect of any Trust Security or for any other liability in respect of any Trust Security. This Section 8.1(b) does not limit the liability of the Trustees expressly set forth elsewhere in this Declaration or, in the case of the Property Trustee, in the Trust Indenture Act.

(c) If an Event of Default has occurred and is continuing, the Property Trustee shall enforce this Declaration and the Transaction Agreements for the benefit of the Holders.

(d) 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 (including pursuant to Section 12.10), and no implied covenants shall be read into this Declaration against the Property Trustee. If an Event of Default has occurred (that has not been cured or waived pursuant to Section 5.07 of the Base Indenture), 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 its exercise thereof, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(e) 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 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 Property Trustee shall be determined solely by the express provisions of this Declaration (including pursuant to Section 12.10), 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 (including pursuant to Section 12.10); 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 or of the Trust Indenture Act 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 an authorized 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 at least a Majority in Liquidation Amount of the HITS of all Affected Classes considered together as a single Class, 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) the Property Trustee's sole duty with respect to the custody, safekeeping and physical preservation of the Notes, the Stock Purchase Contracts, the Preferred Stock and the Payment 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;

(v) the Property Trustee shall not be liable for any interest on any money received by it except as it may otherwise agree with the Sponsor; and money held by the Property Trustee need not be segregated from other funds held by it except in relation to the Payment Account maintained by the Property Trustee pursuant to Section 3.1 and except to the extent otherwise required by law;

(vi) the Property Trustee shall not be responsible for monitoring the compliance by the Regular Trustees, the Sponsor, the Collateral Agent, the Securities Registrar, the Custodial Agent, the Paying Agent, the Remarketing Agent or any other Person, with their respective duties under this Declaration or any Transaction Document, nor shall the Property Trustee be liable for the default or misconduct of any other Trustee, the Regular Trustees, the Sponsor, the Collateral Agent, the Securities Registrar, the Custodial Agent, the Paying Agent, the Remarketing Agent or any other Person; and

(vii) subject to Section 8.1(c), 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 the Property 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 Declaration or adequate indemnity against such risk or liability is not reasonably assured to it.

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

Section 8.2 *Certain Notices.*

Within thirty days after the occurrence of any Event of Default actually known to the Property Trustee or the Regular Trustees, the Property Trustee or the Regular Trustees shall transmit, in the manner and to the extent provided in Section 12.8, notice of such Event of Default to the Holders of each Affected Class, unless such Event of Default shall have been cured or waived.

For so long as Notes are included within the Trust Property, within five Business Days after the receipt of notice of the Sponsor's exercise of its right to defer the payment of interest on the Notes pursuant to the Indenture, the Property Trustee or the Regular Trustees shall transmit, in the manner and to the extent provided in Section 12.8, notice of such exercise to the Holders of the Preferred HITS and the Corporate HITS, unless such exercise shall have been revoked.

If during any calendar year any original issue discount shall have accrued on the Notes, the Sponsor shall file with each Paying Agent promptly at the end of such calendar year (i) a written notice specifying the amount of original issue discount (including daily rates and accrual periods) accrued on outstanding Notes as of the end of such year and (ii) such other specific information relating to such original issue discount as may then be relevant under the Internal Revenue Code of 1986, as amended from time to time.

For so long as Stock Purchase Contracts are included within the Trust Property, within five Business Days after the receipt of notice of the Sponsor's exercise of its right to defer Contract Payments, the Property Trustee or the Regular Trustees shall transmit, in the manner and to the extent provided in Section 12.8, notice of such exercise to the Holders of the Preferred HITS and the Treasury HITS, unless such exercise shall have been revoked.

For so long as shares of Preferred Stock are included within the Trust Property, within five Business Days after the receipt of notice of the Sponsor's determination not to pay dividends on a dividend payment date, the Property Trustee shall transmit, in the manner and to the extent provided in Section 12.8, notice of such decision to the Holders of the Preferred HITS and Treasury HITS, unless such notice shall have been revoked.

The Property Trustee shall not be deemed to have knowledge of any Event of Default unless the Property Trustee shall have received written notice or a Responsible Officer of the Property Trustee charged with the administration of this Declaration shall have obtained actual knowledge of such Event of Default.

Section 8.3 *Certain Rights of Property Trustee.*

Subject to the provisions of Section 8.1:

(a) the Property Trustee may conclusively rely and shall be protected in acting or refraining from acting in good faith upon any resolution, Opinion of Counsel, certificate, written representation of a Holder or transferee, certificate of auditors or any other certificate, statement, instrument, opinion, report, notice, request, consent, order, appraisal, bond, debenture, note, other evidence of indebtedness 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) if (i) in performing its duties under this Declaration the Property Trustee is required to decide between alternative courses of action, (ii) in construing any of the provisions of this Declaration the Property Trustee finds the same ambiguous or inconsistent with any other provisions contained herein, or (iii) the Property Trustee is unsure of the application of any provision of this Declaration, then, except as to any matter as to which the Holders of the HITS are entitled to vote under the terms of this Declaration, the Property Trustee shall deliver a notice to the Sponsor requesting the Sponsor's opinion as to the course of action to be taken; *provided*, *however*, that if the Sponsor fails to deliver such opinion, the Property Trustee may take such action, or refrain from taking such action, as the Property Trustee shall deem advisable and in the interests of the Holders, in which event the Property Trustee shall have no liability except for its own bad faith, negligence or willful misconduct;

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

(d) any direction or act of a Regular Trustee contemplated by this Declaration shall be sufficiently evidenced by a certificate executed by such Regular Trustee and setting forth such direction or act;

(e) 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 re-registration thereof;

(f) the Property Trustee may consult with counsel of its own selection (which counsel may be counsel to the Sponsor or any of its Affiliates, and may include any of its employees) and the advice of such counsel 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 reliance thereon and in accordance with such advice; 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;

(g) 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 of the Holders pursuant to this Declaration, unless such Holders shall have offered to the Property Trustee reasonable security or indemnity satisfactory to it against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction; *provided* that nothing contained in this Section 8.3(g) 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;

(h) 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, consent, order, approval, bond, debenture, note or other evidence of indebtedness or other paper or document, unless requested in writing to do so by one or more Holders, but the Property Trustee may make such further inquiry or investigation into such facts or matters as it may see fit at the expense of the Sponsor and shall incur no liability of any kind by reason of such inquiry or investigation;

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

(j) 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 (which instructions may only be given by the Holders of the same proportion in Liquidation Amount of the Trust Securities as would be entitled to direct the Property Trustee under the terms of the Trust 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 acting in accordance with such instructions;

(k) 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. No provision of this Declaration shall be deemed to impose any duty or obligation on any 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 such Person 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 any Trustee shall be construed to be a duty;

(l) 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 the Indenture;

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

(n) the rights, privileges, protections, immunities and benefits given to the Property Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Property Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

Section 8.4 *Not Responsible for Recitals or Issuance of Securities.*

The recitals contained herein and in the Trust Securities Certificates shall be taken as the statements of the Trust and the Sponsor, and the Trustees do not assume any responsibility for their correctness. The Trustees shall not be accountable for the use or application by the Sponsor of the proceeds of the Notes.

Section 8.5 *May Hold Securities.*

Any Trustee or any other agent of any Trustee or the Trust, in its individual or any other capacity, may become the owner or pledgee of Trust Securities and, subject to Sections 8.8 and 8.13, may otherwise deal with the Trust with the same rights it would have if it were not Trustee or such other agent.

Section 8.6 *Compensation; Indemnity; Fees.*

The Sponsor agrees:

(a) to pay to the Trustees from time to time such reasonable compensation for all services rendered by them hereunder as may be separately agreed by the Sponsor and the Trustees from time to time (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(b) except as otherwise expressly provided herein, to reimburse the Trustees upon request for all reasonable expenses, disbursements and advances incurred or made by the Trustees in accordance with any provision of this Declaration (including the reasonable compensation and the expenses and disbursements of their agents and counsel), except any such expense, disbursement or advance as shall be determined to have been caused by their own negligence, bad faith or willful misconduct; and

(c) to the fullest extent permitted by applicable law, to indemnify and hold harmless (i) each Trustee, (ii) any Affiliate of any Trustee, (iii) any officer, director, shareholder, employee, representative or agent of any Trustee, and (iv) any employee or agent of the Trust (referred to herein as an "*Indemnified Person*") from and against any loss, damage, liability, action, suit, tax, penalty, expense or claim of any kind or nature whatsoever incurred by such Indemnified Person by reason of the creation, operation or

dissolution of the Trust or 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 authority conferred on such Indemnified Person by this Declaration, except that no Indemnified Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Indemnified Person by reason of negligence, bad faith or willful misconduct with respect to such acts or omissions.

The provisions of this Section 8.6 shall survive the termination of this Declaration and the removal or resignation of any Trustee. No Trustee may claim any Lien on any Trust Property as a result of any amount due pursuant to this Section 8.6.

Notwithstanding any provision of law or equity, the Sponsor and any 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 Trust 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. Notwithstanding any provision of law or equity, neither the Sponsor nor any 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 the Sponsor and any 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. Notwithstanding any provision of law or equity, any 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.

Section 8.7 *Corporate Property Trustee Required; Eligibility of Trustees and Regular Trustees.*

(a) There shall at all times be a Property Trustee hereunder with respect to the Trust Securities. The Property Trustee shall be a Person that is a national or state chartered bank and eligible pursuant to the Trust Indenture Act to act as such and that has a combined capital and surplus of at least $50,000,000. If any such Person publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, then for the purposes of this Section 8.7 and to the extent permitted by the Trust Indenture Act, the combined capital and surplus of such Person 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 the Property Trustee with respect to the Trust Securities shall cease to be eligible in accordance with the provisions of this Section 8.7, it shall resign immediately in the manner and with the effect hereinafter specified in this Article VIII. At the time of appointment, the Property Trustee must have securities rated in one of the three highest rating categories by a nationally recognized statistical rating organization.

(b) There shall at all times be one or more Regular Trustees hereunder with respect to the Trust Securities. Each Regular Trustee shall be either a natural person who is at least 21 years of age or a legal entity that shall act through one or more persons authorized to bind that entity.

(c) There shall at all times be a Delaware Trustee. The Delaware Trustee shall either be (i) a natural person who is at least 21 years of age and a resident of the State of Delaware, or (ii) a legal entity with its principal place of business in the State of Delaware and that otherwise meets the requirements of applicable Delaware law and that shall act through one or more persons authorized to bind such entity.

Section 8.8 *Conflicting Interests.*

(a) If the Property Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Property Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Declaration.

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

Section 8.9 *Co-Trustees and Separate Trustee.*

Unless and until a Note Event of Default shall have occurred and be continuing, at any time or times, for the purpose of meeting the legal requirements of the Trust Indenture Act or of any jurisdiction in which any part of the Trust Property may at the time be located, the Holder of Common Securities and the Regular Trustees shall have the power to appoint one or more Persons either to act as co-trustee, jointly with the Property Trustee, of all or any part of such Trust Property, or to the extent required by law to act as separate trustee of any such property, in either case with such powers as may be provided in the instrument of appointment, and to vest in such Person or Persons in the capacity aforesaid, any property, title, right or power deemed necessary or desirable, subject to the other provisions of this Section. If a Note Event of Default shall have occurred and be continuing, the Property Trustee shall have the sole power to so appoint such a co-trustee or separate trustee, and upon the written request of the Property Trustee, the Sponsor, and the Regular Trustees shall for such purpose join with the Property Trustee in the execution, delivery, and performance of all instruments and agreements necessary or proper to appoint, such co-trustee or separate trustee. Any co-trustee or separate trustee appointed pursuant to this Section shall either be (i) a natural person who is at least 21 years of age and a resident of the United States, or (ii) a legal entity with its principal place of business in the United States that shall act through one or more persons authorized to bind such entity.

Should any written instrument from the Sponsor be required by any co-trustee or separate trustee so appointed for more fully confirming to such co-trustee or separate trustee such property, title, right, or power, any and all such instruments shall, on request, be executed, acknowledged and delivered by the Sponsor.

Every co-trustee or separate trustee shall, to the extent permitted by law, but to such extent only, be appointed subject to the following terms, namely:

(a) The Trust Securities shall be executed by one or more Regular Trustees, and the Trust Securities shall be delivered by the Property Trustee or a Regular Trustee on behalf of the Property Trustee, and all rights, powers, duties, and obligations hereunder in respect of the custody of securities, cash and other personal property held by, or required to be deposited or pledged with, the Property Trustee specified hereunder shall be exercised solely by the Property Trustee and not by such co-trustee or separate trustee.

(b) The rights, powers, duties, and obligations hereby conferred or imposed upon the Property Trustee in respect of any property covered by such appointment shall be conferred or imposed upon and exercised or performed by the Property Trustee or by the Property Trustee and such co-trustee or separate trustee jointly, as shall be provided in the instrument appointing such co-trustee or separate trustee, except to the extent that under any law of any jurisdiction in which any particular act is to be performed, the Property Trustee shall be incompetent or unqualified to perform such act, in which event such rights, powers, duties and obligations shall be exercised and performed by such co-trustee or separate trustee.

(c) The Property Trustee at any time, by an instrument in writing executed by it, with the written concurrence of the Sponsor, may accept the resignation of or remove any co-trustee or separate trustee appointed under this Section 8.9, and, in case a Note Event of Default has occurred and is continuing, the Property Trustee shall have power to accept the resignation of, or remove, any such co-trustee or separate trustee without the concurrence of the Sponsor. Upon the written request of the Property Trustee, the Sponsor shall join with the Property Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co-trustee or separate trustee so resigning or removed may be appointed in the manner provided in this Section 8.9.

No co-trustee or separate trustee hereunder shall be personally liable by reason of any act or omission of the Property Trustee or any other trustee hereunder.

(d) The Property Trustee shall not be liable by reason of any act of a co-trustee or separate trustee.

(e) Any Act of Holders delivered to the Property Trustee shall be deemed to have been delivered to each such co-trustee and separate trustee.

Section 8.10 *Resignation and Removal; Appointment of Successor.*

No resignation or removal of any Trustee (the "*Relevant Trustee*") and no appointment of a successor Trustee pursuant to this Article VIII shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 8.11.

Subject to the immediately preceding paragraph, the Relevant Trustee may resign at any time by giving written notice thereof to the Holders. The Corporation shall appoint a successor by requesting from at least three Persons meeting the eligibility requirements its expenses and charges to serve as the Relevant Trustee on a form provided by the Regular Trustees, and selecting the Person who agrees to the lowest expenses and charges. If the instrument of acceptance by the successor Trustee required by Section 8.11 shall not have been delivered to the Relevant Trustee within 60 days after the giving of such notice of resignation, the Relevant Trustee may petition, at the expense of the Sponsor, in the case of the Property Trustee, any court of competent jurisdiction for the appointment of a successor Relevant Trustee.

The Regular Trustees, or any of them, may be removed at any time by Act of the Holders of Common Securities delivered to the Relevant Trustee.

The Property Trustee or the Delaware Trustee, or both of them, may be removed by Act of the Holders of at least a Majority in Liquidation Amount of the HITS, delivered to the Relevant Trustee (in its individual capacity and, in the case of the Property Trustee, on behalf of the Trust) (i) for cause (including upon the occurrence of an Event of Default described in subparagraph (e) of the definition thereof with respect to the Relevant Trustee), or (ii) at any time if a Note Event of Default shall have occurred and be continuing. Unless and until a Note Event of Default shall have occurred and be continuing, the Property Trustee or the Delaware Trustee, or both of them, may be removed at any time by Act of the Holders of the Common Securities.

If a resigning Property Trustee or Delaware Trustee shall fail to appoint a successor, or if the Property Trustee or the Delaware Trustee shall be removed or become incapable of acting as Trustee, or if

a vacancy shall occur in the office of the Property Trustee or the Delaware Trustee for any cause, the Holders of the Common Securities by Act of such Holders delivered to the Relevant Trustee or, if a Note Event of Default shall have occurred and be continuing, the Holders of the HITS, by Act of the Holders of not less than 25% in aggregate Liquidation Amount of the HITS then Outstanding delivered to such Relevant Trustee, may appoint a successor Relevant Trustee or Trustees, and such successor Trustee shall comply with the applicable requirements of Section 8.11. If no successor Relevant Trustee shall have been so appointed by the Holders of the Common Securities or HITS, as the case may be, and accepted appointment in the manner required by Section 8.11, any Holder, on behalf of such Holder and all others similarly situated, or any other Trustee, may petition any court of competent jurisdiction for the appointment of a successor Relevant Trustee.

The Property Trustee shall give notice of each resignation and each removal of a Trustee and each appointment of a successor Trustee to all Holders in the manner provided in Section 12.8 and shall give notice to the Sponsor and to the Regular Trustees. Each notice shall include the name of the successor Relevant Trustee and the address of its Corporate Trust Office if it is the Property Trustee.

Notwithstanding the foregoing or any other provision of this Declaration, if any Delaware Trustee who is a natural person dies or becomes, in the opinion of the Holders of the Common Securities, incompetent or incapacitated, the vacancy created by such death, incompetence or incapacity may be filled by the Property Trustee following the procedures regarding expenses and charges set forth above (with the successor being a Person who satisfies the eligibility requirement for the Delaware Trustee set forth in Section 8.7).

Section 8.11 *Acceptance of Appointment by Successor.*

In case of the appointment hereunder of a successor Relevant Trustee, the retiring Relevant Trustee (if requested by the Sponsor) and each successor Relevant Trustee with respect to the Trust Securities shall execute and deliver an amendment hereto wherein each successor Relevant Trustee shall accept such appointment and which (a) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Relevant Trustee all the rights, powers, trusts and duties of the retiring Relevant Trustee with respect to the Trust Securities and the Trust, and (b) shall add to or change any of the provisions of this Declaration as shall be necessary to provide for or facilitate the administration of the Trust by more than one Relevant Trustee, it being understood that nothing herein or in such amendment shall constitute such Relevant Trustees co-trustees and upon the execution and delivery of such amendment the resignation or removal of the retiring Relevant Trustee shall become effective to the extent provided therein and each such successor Relevant Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Relevant Trustee, other than the filing of an amendment to the Certificate of Trust to the extent required under the Delaware Statutory Trust Act; but, on request of the Trust or any successor Relevant Trustee such retiring Relevant Trustee shall duly assign, transfer and deliver to such successor Relevant Trustee all Trust Property, all proceeds thereof and money held by such retiring Relevant Trustee hereunder with respect to the Trust Securities and the Trust.

Upon request of any such successor Relevant Trustee, the Trust shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Relevant Trustee all such rights, powers and trusts referred to in the preceding paragraph.

No successor Relevant Trustee shall accept its appointment unless at the time of such acceptance such successor Relevant Trustee shall be qualified and eligible under this Article VIII.

Section 8.12 *Merger, Conversion, Consolidation or Succession to Business.*

Any Person into which the Property Trustee or the Delaware Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which such Relevant Trustee shall be a party, or any Person, succeeding to all or substantially all the corporate trust business of such Relevant Trustee, shall be the successor of such Relevant Trustee hereunder, *provided* that such Person shall be otherwise qualified and eligible under this Article VIII, without the execution or filing of any paper or any further act on the part of any of the parties hereto, other than the filing of an amendment to the Certificate of Trust to the extent required under the Delaware Statutory Trust Act.

Section 8.13 *Preferential Collection of Claims Against Sponsor or Trust.*

If and when the Property Trustee shall be or become a creditor of the Sponsor or the Trust (or any other obligor upon the HITS), the Property Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Sponsor or the Trust (or any such other obligor).

Section 8.14 *Property Trustee May File Proofs of Claim.*

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

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

(b) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Property Trustee and, in the event the Property Trustee shall consent to the making of such payments directly to the Holders, to pay to the Property Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Property Trustee, its agents and counsel, and any other amounts due the Property Trustee.

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

Section 8.15 *Reports by Property Trustee.*

(a) The Property Trustee shall transmit to Holders such reports concerning the Property Trustee and its actions under this Declaration 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 Property Trustee shall, within sixty days after each May 15 following the date of the initial issuance of Trust Securities under the Declaration deliver to Holders a brief report, dated as of such May 15, 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 Holders, be filed by the Property Trustee with each stock exchange, if any, upon which the Trust Securities are listed, with the Commission and with the Sponsor. The Sponsor will promptly notify the Property Trustee in writing when the Securities are listed on any stock exchange and of any delisting thereof.

Section 8.16 *Reports to the Property Trustee.*

Each of the Sponsor and the Regular Trustees shall provide to the Property Trustee such documents, reports and information as required by Section 314 of the Trust Indenture Act (if any) and the compliance certificate required by Section 314(a) of the Trust Indenture Act in the form, in the manner and at the times required by Section 314 of the Trust Indenture Act. The Sponsor and the Regular Trustees shall annually file with the Property Trustee a certificate specifying whether such Person is in compliance with all of the terms and covenants (if any) applicable to such Person hereunder.

Section 8.17 *Evidence of Compliance with Conditions Precedent.*

Each of the Sponsor and the Regular Trustees 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) of the Trust Indenture Act shall be given in the form of an Officers' Certificate.

Section 8.18 *Number of Trustees.*

(a) The number of Trustees shall be five, unless the Property Trustee also acts as the Delaware Trustee, in which case the number of Trustees may be four.

(b) If a Trustee ceases to hold office for any reason, a vacancy shall occur. The vacancy shall be filled with a Trustee appointed in accordance with Section 8.10.

(c) The death, resignation, retirement, removal, bankruptcy, incompetence or incapacity to perform the duties of a Trustee shall not operate to annul, terminate or dissolve the Trust.

Section 8.19 *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 2.7(a) or making any governmental filing.

(b) The Regular Trustees shall have power to delegate from time to time to such of their number 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 not prohibited by applicable law or contrary to the provisions of this Declaration.

ARTICLE IX

DISSOLUTION, LIQUIDATION AND MERGER

Section 9.1 *Perpetual Existence.*

The Trust shall have perpetual existence and shall be dissolved only in accordance with this Article IX.

Section 9.2 *Early Dissolution.*

The first to occur of any of the following events is an "*Early Dissolution Event*":

(a) the occurrence of a Bankruptcy Event in respect of, or the dissolution or liquidation of, the Sponsor, unless the Common Securities shall be transferred as provided by Section 5.10, in which case this provision shall refer instead to any such successor Holder of the Common Securities;

(b) upon the filing of a certificate of dissolution or its equivalent with respect to the Sponsor;

(c) 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;

(d) upon the revocation of the Sponsor's charter and the expiration of 90 days after the date of revocation without a reinstatement thereof;

(e) at the Sponsor's election at any time pursuant to which the Trust shall have been dissolved in accordance with the terms of the Trust Securities and upon the distribution of the assets of the Trust corresponding to its securities to the holders of the Trust Securities;

(f) the redemption of all of the HITS in accordance with the provisions of this Declaration; and

(g) the entry of an order for dissolution of the Trust by a court of competent jurisdiction.

If an Early Dissolution Event occurs, Section 9.4 shall apply.

Section 9.3 *Dissolution.*

Upon the occurrence of any Early Dissolution Event, the Trust shall dissolve and the Property Trustee and the Regular Trustees shall wind up the affairs of the Trust in accordance with Section 9.4 hereof and Section 3808 of the Delaware Statutory Trust Act. The respective obligations and responsibilities of the Trustees, the Regular Trustees and the Trust created and continued hereby shall terminate upon the latest to occur of the following: (a) the distribution by the Property Trustee to Holders of all amounts required to be distributed hereunder upon the liquidation of the Trust pursuant to Section 9.4, or upon the redemption of all of the Trust Securities pursuant to Section 4.2; (b) the payment of any expenses owed by the Trust; and (c) the discharge of all administrative duties of the Regular Trustees, including the performance of any tax reporting obligations with respect to the Trust or the Holders. Upon completion of winding up, the Regular Trustees shall file a certificate of cancellation with the Secretary of State of the State of Delaware.

Section 9.4 *Liquidation.*

(a) If an Early Dissolution Event specified in clause (a) of Section 9.2 occurs, the Trust shall be liquidated by the Property Trustee and the Regular Trustees as expeditiously as the Property Trustee and the Regular Trustees determine to be possible by distributing, after satisfaction of liabilities to creditors of the Trust as provided by applicable law, to each Holder of HITS of each Class a Like Amount of Corresponding Assets as of the date of such distribution, subject to Section 9.4(d). If an Early Dissolution Event specified in clause (g) of Section 9.2 occurs, because such Early Dissolution Event is also an Early Settlement Event, unless otherwise required by applicable law, the Trust will not be liquidated until after the Stock Purchase Date but, commencing promptly after the Stock Purchase Date, the Trust shall be liquidated by the Property Trustee and the Regular Trustees as expeditiously as the Property Trustee and the Regular Trustees determine to be possible by distributing, after satisfaction of liabilities to creditors of the Trust as provided by applicable law, to each Holder of HITS of each Class a Like Amount of Corresponding Assets as of the date of such distribution, subject to Section 9.4(d). Notice of liquidation shall be given by the Property Trustee or the Regular Trustees by first-class mail, postage prepaid, mailed not less than 15 nor more than 60 days prior to the Liquidation Date to each Holder of HITS of each Class at such Holder's address appearing in the Securities Register. All such notices of liquidation shall:

(i) state the CUSIP Number of the Trust Securities of each Class;

(ii) state the Liquidation Date;

(iii) state that from and after the Liquidation Date, the Trust Securities of such Class will no longer be deemed to be Outstanding and any Trust Securities Certificates not surrendered for exchange will be deemed to represent a Like Amount of Corresponding Assets as of the date of such distribution, or if Section 9.4(d) applies, a right to receive a Liquidation Distribution; and

(iv) provide such information with respect to the mechanics by which Holders may exchange Trust Securities Certificates of such Class for Corresponding Assets, or if Section 9.4(d) applies, receive a Liquidation Distribution, as the Property Trustee (after consultation with the Regular Trustees) shall deem appropriate.

(b) Except where Section 9.2(e) or 9.4(d) applies, in order to effect the liquidation of the Trust and distribution of the Corresponding Assets to Holders, the Property Trustee, either itself acting as exchange agent or through the appointment of a separate exchange agent, shall establish a record date for such distribution (which shall be not more than 30 days prior to the Liquidation Date) and, establish such procedures as it shall deem appropriate to effect the distribution of Corresponding Assets in exchange for the Outstanding Trust Securities Certificates of the related Classes.

(c) Except where Section 9.2(e) or 9.4(d) applies, after the Liquidation Date, (i) the Trust Securities will no longer be deemed to be Outstanding, (ii) if the Corresponding Assets for a Class of HITS are Notes or shares of Preferred Stock, certificates representing a Like Amount of Notes or Preferred Stock (or fractional interests in or depositary shares for Preferred Stock) will be issued to Holders of Trust Securities Certificates of the relevant Classes, upon surrender of such certificates to the exchange agent for exchange, and where Pledged Treasury Securities are Corresponding Assets, Pledged Treasury Securities will be delivered by Book-Entry Transfer to Holders upon surrender of such certificates, (iii) any Trust Securities Certificates not so surrendered for exchange will be deemed to represent a Like Amount of Corresponding Assets of the applicable Class until such certificates are so surrendered (and until such certificates are so surrendered, no payments of interest, principal, dividends, redemption price or otherwise will be made to Holders of Trust Securities Certificates with respect to such Corresponding Assets) and (iv) all rights of Holders holding Trust Securities will cease, except the right of such Holders to receive Corresponding Assets upon surrender of Trust Securities Certificates.

(d) If, notwithstanding the other provisions of this Section 9.4, whether because of an order for dissolution entered by a court of competent jurisdiction or otherwise, distribution of the Corresponding Assets in the manner provided herein is determined by the Property Trustee and the Regular Trustees not to be practical, or if an Early Dissolution Event specified in clause (e) of Section 9.2 occurs, the Trust Property shall be liquidated, and the Trust's affairs wound-up, by the Property Trustee and the Regular Trustees in such manner as the Property Trustee and the Regular Trustees determine. In such event, upon the winding-up of the Trust except with respect to an Early Dissolution Event specified in clause (e) of Section 9.2, Holders will be entitled to receive out of the assets of the Trust available for distribution to Holders, after satisfaction of liabilities to creditors of the Trust as provided by applicable law, an amount equal to the Liquidation Amount per Trust Security plus accumulated and unpaid Distributions thereon to the date of payment (such amount being the "*Liquidation Distribution*"). If, upon any such winding-up, 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, subject to the next succeeding sentence, the amounts payable by the Trust on the Trust Securities shall be paid on a *pro rata* basis (based upon Liquidation Amounts), except that the right of Holders of the Common Securities to receive Liquidation Distributions will be subordinated to the right of Holders of HITS to receive Liquidation Distributions as provided in Section 4.3(c).

Section 9.5 *Mergers, Consolidations, Amalgamations or Replacements of Trust.*

(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 9.5(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 Trust 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 Trust Securities; or

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

(ii) the Corporation 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 Trust Securities or any Successor Securities which are listed, will be listed upon notification of issuance, on any national or international securities exchange or with another organization, if any, on which such Trust Securities are then listed or quoted;

(iv) such merger, consolidation, amalgamation or replacement does not cause the Trust Securities (including any Successor Securities of the Trust 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 Trust 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 Trust 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 Guarantee Agreements.

(c) Notwithstanding Section 9.5(b), the Trust shall not, except with the consent of holders of 100% in liquidation amount of the 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 Successor Entity to be classified as other than a grantor trust for United States federal income tax purposes.

ARTICLE X

QUALIFYING TREASURY SECURITIES

Section 10.1 *Qualifying Treasury Securities*.

(a) The Regular Trustees or any one of them shall, for each March 15, June 15, September 15 and December 15, commencing on June 15, 2007 and ending on the Stock Purchase Date or the earlier termination of the Stock Purchase Contracts, or if any such day is not a Business Day, the immediately succeeding Business Day (each, a "*Reference Date*") identify:

(i) the 13-week treasury bill that matures at least one and not more than six Business Days prior to that Reference Date, or

(ii) if no 13-week treasury bill that matures at least one and not more than six Business Days prior to that Reference Date is or is scheduled to be outstanding on the immediately preceding Reference Date, the 26-week treasury bill that matures at least one and not more than six Business Days prior to that Reference Date, or

(iii) if neither of such treasury bills is or is scheduled to be outstanding on the immediately preceding Reference Date, any other treasury security (which may be a zero coupon treasury security) that is outstanding on the immediately preceding Reference Date, is highly liquid and matures at least one Business Day prior to such Reference Date; *provided* that any treasury security identified pursuant to this clause (iii) shall be selected in a manner intended to minimize the cash value of the security selected.

(b) The Regular Trustees or any one of them shall use commercially reasonable efforts to identify the security meeting the foregoing criteria for each Reference Date promptly after the Department of the Treasury makes the schedule for upcoming auctions of treasury securities publicly available and shall, to the extent that a security previously identified with respect to any Reference Date is no longer expected to be outstanding on the immediately preceding Reference Date, identify another security meeting the foregoing criteria for such Reference Date. The security most recently identified by the Regular Trustees or any one of them with respect to any Reference Date shall be the "*Qualifying Treasury Security*" with respect to the period from and including its date of issuance (or if later, the date of maturity of the Qualifying Treasury Security with respect to the immediately preceding Reference Date) to but excluding its date of maturity, and the Regular Trustees' identification of a security as a Qualifying Treasury Security for such period shall be final and binding for all purposes absent manifest error. The Regular Trustees or any one of them shall give (or cause to be given) prompt written notice to the Sponsor, the Collateral Agent, the Custodial Agent and the Property Trustee of each determination made pursuant to this Section 10.1.

ARTICLE XI

OTHER HITS RELATED PROVISIONS

Section 11.1 Tax Treatment.

Each Holder of HITS agrees, by acceptance of HITS, and each Owner agrees, by acceptance of a beneficial interest in HITS, to treat for all U.S. federal income tax purposes (i) the Trust as one or more grantor trusts and/or agency arrangements, (ii) itself as the owner of the Corresponding Assets for the related Class of HITS, (iii) in the case of Preferred HITS the fair market value of the $1,000 principal amount of Notes corresponding to one Preferred HITS as $1,000 and the fair market value of 1/100th fractional interest in a Stock Purchase Contract corresponding to one Preferred HITS as $0 at the time of initial purchase, (iv) the Notes as indebtedness of the Sponsor, and (v) the stated interest on the Notes as ordinary interest income that is includible in the Holder's or Owner's gross income at the time the interest is paid or accrued in accordance with the Holder's or Owner's regular method of tax accounting, and otherwise to treat the Notes as described in the Prospectus.

ARTICLE XII MISCELLANEOUS PROVISIONS

Section 12.1 *Limitation of Rights of Holders.*

Except as set forth in Section 9.2, the death, dissolution, bankruptcy or incapacity of any Person having an interest, beneficial or otherwise, in Trust Securities shall not operate to terminate this Declaration nor dissolve, terminate or annul the Trust, nor entitle the legal representatives or heirs of such person or any Holder for such Person, to claim an accounting, take any action or bring any proceeding in any court for a partition or winding up of the arrangements contemplated hereby, nor otherwise affect the rights, obligations and liabilities of the parties hereto or any of them.

Section 12.2 *Amendment.*

(a) This Declaration may be amended from time to time by the Regular Trustees and the Holders of all of the Common Securities, without the consent of any Holder of the HITS, the Property Trustee or the Delaware Trustee (i) to cure any ambiguity, correct or supplement any provision herein that may be inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Declaration, which shall not be inconsistent with the other provisions of this Declaration, (ii) to modify, eliminate or add to any provisions of this Declaration to such extent as shall be necessary to ensure that the Trust will not be taxable as a corporation or classified as a partnership for U.S. federal income tax purposes at all times that any Trust Securities are outstanding, to ensure that the Trust will not be required to register as an "investment company" under the Investment Company Act or to ensure the treatment of the HITS as Tier 1 regulatory capital under the prevailing Federal Reserve rules and regulations, (iii) to provide that HITS Certificates may be executed by a Regular Trustee by facsimile signature instead of manual signature, in which case such amendment(s) shall also provide for the appointment by the Sponsor of an authentication agent, the fees and expenses of which will be paid by the Sponsor, a form of authentication certificate, and provisions to the effect that HITS Certificates that have been executed by a Regular Trustee by facsimile signature shall not be entitled to any benefit under the Declaration or be valid or obligatory for any purpose unless the certificate of authentication thereon has been executed by the authentication agent by manual signature, or (iv) to conform the terms of this Declaration to the description of this Declaration and the Trust Securities in the Prospectus; *provided*, *however*, that in the case of either clause (i) or (ii), such action shall not adversely affect in any material respect the interests of any Holder, the Property Trustee or the Delaware Trustee; *provided*, *further*, that in the case of clause (iv), the Sponsor shall deliver to the Property Trustee an Officers' Certificate and an Opinion of Counsel (who may be counsel to the Sponsor or the Trust), in each case confirming that such amendment has the effect of conforming the terms of this Declaration to the descriptions of this Declaration and the Trust Securities in the Prospectus. Any such amendment shall become effective when notice is given to the Property Trustee and the Holders of the HITS.

(b) Except as provided in Section 12.2(c), any provision of this Declaration may be amended by the Regular Trustees and the Holders of all of the Common Securities and with (i) the consent of Holders of at least a Majority in Liquidation Amount of the Outstanding HITS of each Affected Class, and (ii) receipt by the Trustees of an Opinion of Counsel experienced in such matters to the effect that such amendment or the exercise of any power granted to the Trustees or the Regular Trustees in accordance with such amendment will not affect the Trust's status as a grantor trust or cause the Trust to be classified as an association or a publicly traded partnership taxable as a corporation for U.S. federal income tax purposes or affect the Trust's exemption from status as an "investment company" under the Investment Company Act.

(c) In addition to and notwithstanding any other provision in this Declaration, without the consent of each affected Holder, this Declaration may not be amended to (i) change the amount or timing of any Distribution on the Trust Securities or otherwise adversely affect the amount of any Distribution required to be made in respect of the Trust Securities as of a specified date, or (ii) restrict the right of a Holder to institute suit for the enforcement of any such payment on or after such date; and notwithstanding any other provision herein, without the unanimous consent of the Holders, this Section 12.2(c) may not be amended.

(d) Notwithstanding any other provisions of this Declaration, no Trustee shall enter into or consent to any amendment to this Declaration that would cause the Trust to fail or cease to qualify for the exemption from status as an "investment company" under the Investment Company Act or to be taxable as a corporation or to be classified as other than as one or more grantor trusts and/or agency arrangements for U.S. federal income tax purposes. In particular, no Trustee shall enter into or consent to any amendment to this Declaration that would cause the Trust to be classified as an association or a publicly traded partnership taxable as a corporation for U.S. federal income tax purposes.

(e) Notwithstanding anything in this Declaration to the contrary, without the consent of the Sponsor and the Regular Trustees, this Declaration may not be amended in a manner that imposes any additional obligation on the Sponsor or the Regular Trustees.

(f) Notwithstanding anything in this Declaration to the contrary, without the consent of the Property Trustee, this Declaration may not be amended in a manner that imposes any additional obligation on the Property Trustee or that adversely affects the Property Trustee.

(g) Notwithstanding anything in this Declaration to the contrary, without the consent of the Delaware Trustee, this Declaration may not be amended in a manner that imposes any additional obligation on the Delaware Trustee or that adversely affects the Delaware Trustee.

(h) Notwithstanding anything in this Declaration to the contrary, without the consent of the Securities Registrar and the Paying Agent, this Declaration may not be amended in a manner that imposes any additional obligation on the Securities Registrar or the Paying Agent or that adversely affects the Securities Registrar or the Paying Agent.

(i) In the event that any amendment to this Declaration is made, the Regular Trustees shall promptly provide to the Sponsor, the Property Trustee and the Delaware Trustee a copy of such amendment.

(j) Neither the Property Trustee nor the Delaware Trustee shall be required to enter into any amendment to this Declaration that affects its own rights, duties or immunities under this Declaration. The Property Trustee and the Delaware Trustee shall be entitled to receive an Opinion of Counsel and an Officers' Certificate stating that any amendment to this Declaration is in compliance with this Declaration.

Section 12.3 Separability Clause.

In case any provision in this Declaration or in the Trust Securities Certificates shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 12.4 *Governing Law.*

This Declaration and the Trust Securities shall be governed by and construed in accordance with the laws of the State of Delaware (without regard to conflicts of laws principles).

Section 12.5 *Payments Due on Non-Business Day.*

If the date fixed for any payment on any Trust Security shall be a day that is not a Business Day, then such payment need not be made on such date but may be made on the next succeeding day that is a Business Day, with the same force and effect as though made on the date fixed for such payment, and no Distributions shall accumulate on such unpaid amount for the period after such date.

Section 12.6 *Successors and Assigns.*

All covenants and agreements in this Declaration by each party hereto shall bind its successors and assigns, whether so expressed or not. Except in connection with a consolidation, merger or sale involving the Sponsor that is permitted under Article 10 of the Base Indenture and pursuant to which the assignee agrees in writing to perform the Sponsor's obligations hereunder, the Sponsor shall not assign its obligations hereunder.

Section 12.7 *Effect of Headings and Table of Contents.*

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

Section 12.8 *Reports, Notices and Demands.*

Any report, notice, demand or other communication that by any provision of this Declaration is required or permitted to be given or served to or upon any Holder, the Sponsor or the Regular Trustees may be given or served in writing by deposit thereof, first-class postage prepaid, in the United States mail, hand delivery or facsimile transmission, in each case, addressed, (a) in the case of a Holder of HITS, to such Holder as such Holder's name and address may appear on the Securities Register and (b) in the case of the Holder of the Common Securities or the Sponsor, to Bank of America Corporation, NC1-007-07-06, 100 North Tryon Street, Charlotte, North Carolina, 28255, Attention: Corporate Treasury—Securities Administration, facsimile (704) 386-0270, or to such other address as may be specified in a written notice by the Sponsor to the Property Trustee. Such notice, demand or other communication to or upon a Holder shall be deemed to have been sufficiently given or made, for all purposes, upon hand delivery, mailing or transmission. Such notice, demand or other communication to or upon the Sponsor or the Holder of the Common Securities shall be deemed to have been sufficiently given or made only upon actual receipt of the writing by the Sponsor or the Holder of the Common Securities, as the case may be. Any notice, demand or other communication that by any provision of this Declaration is required or permitted to be given or served to or upon the Trust, the Property Trustee, the Delaware Trustee, the Regular Trustees or the Trust shall be given in writing addressed to such Person as follows: (a) with respect to the Property Trustee, to The Bank of New York, 101 Barclay Street, 8 West, New York, New York 10286, facsimile: (904) 645-1921, Attention: Corporate Trust Administration, (b) with respect to the Delaware Trustee, to The Bank of New York (Delaware), 100 White Clay Center, Route 273, Newark Delaware 19711, facsimile: (302) 453-4400, Attention: Corporate Trust Administration; (c) with respect to the Regular Trustees, to them at c/o Bank of America Corporation, NC1-007-07-06, 100 North Tryon Street, Charlotte, North Carolina, 28255, Attention: Corporate Treasury—Securities Administration, facsimile (704) 386-0270; and (d) with respect to the Trust, to its principal office specified in Section 2.2, with a copy to the Property Trustee. Such notice, demand or other communication to or upon the Trust, the Property Trustee or the Regular Trustees shall be deemed to have been sufficiently given or made only upon actual receipt of the writing by the Trust, the Property Trustee or such Regular Trustee.

Section 12.9 *Agreement Not to Petition.*

To the fullest extent permitted by law, each of the Trustees and the Sponsor agree for the benefit of the Holders that, until at least one year and one day after the Trust has been dissolved in accordance with Article IX, they shall not file, or join in the filing of, a petition against the Trust under any bankruptcy, insolvency, reorganization or other similar law (including the United States Bankruptcy Code) (collectively, "*Bankruptcy Laws*") or otherwise join in the commencement of any proceeding against the Trust under any Bankruptcy Law. If the Sponsor takes action in violation of this Section 12.9, the Property Trustee agrees, for the benefit of Holders, that at the expense of the Sponsor, it shall file an answer with the bankruptcy court or otherwise properly contest the filing of such petition by the Sponsor against the Trust or the commencement of such action and raise the defense that the Sponsor has agreed in writing not to take such action and should be stopped and precluded therefrom and such other defenses, if any, as counsel for the Trustee or the Trust may assert.

Section 12.10 *Trust Indenture Act; Conflict with Trust Indenture Act.*

(a) If any provision hereof limits, qualifies or conflicts with a provision of the Trust Indenture Act that is required under such Act to be a part of and govern this Declaration, the latter provision shall control. If any provision of this Declaration modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded, the latter provision shall be deemed to apply to this Declaration as so modified or to be excluded, as the case may be.

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

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

Section 12.11 *Acceptance of Terms of Declaration, Guarantee Agreements and Indenture.*

THE RECEIPT AND ACCEPTANCE OF A TRUST SECURITY OR ANY INTEREST THEREIN BY OR ON BEHALF OF A HOLDER OR ANY BENEFICIAL OWNER, WITHOUT ANY SIGNATURE OR FURTHER MANIFESTATION OF ASSENT, SHALL CONSTITUTE THE UNCONDITIONAL ACCEPTANCE BY THE HOLDER AND ALL OTHERS HAVING A BENEFICIAL INTEREST IN SUCH TRUST SECURITY OF ALL THE TERMS AND PROVISIONS OF THIS DECLARATION, THE GUARANTEE AGREEMENTS AND THE INDENTURE, AND AGREEMENT TO THE SUBORDINATION PROVISIONS AND OTHER TERMS OF THE GUARANTEE AGREEMENTS AND THE INDENTURE, AND SHALL CONSTITUTE THE AGREEMENT OF THE TRUST, SUCH HOLDER AND SUCH OTHERS THAT THE TERMS AND PROVISIONS OF THIS DECLARATION SHALL BE BINDING, OPERATIVE AND EFFECTIVE AS BETWEEN THE TRUST AND SUCH HOLDER AND SUCH OTHERS.

* * * *

Section 12.12 *Force Majeure*

In no event shall the Property Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Property Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

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

[*Signature pages follow*]

IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Declaration as of the day and year first above written.

BANK OF AMERICA CORPORATION, as Sponsor

By: /s/ Ann J. Travis
Name: Ann J. Travis
Title:

THE BANK OF NEW YORK,
not in its individual capacity, but solely as Property Trustee

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

THE BANK OF NEW YORK (DELAWARE),
not in its individual capacity, but solely as Delaware Trustee

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

/s/ James T. Houghton
James T. Houghton, as Regular Trustee

/s/ Richard L. Nichols Jr.
Richard L. Nichols, Jr., as Regular Trustee

/s/ Ann J. Travis
Ann J. Travis, as Regular Trustee

EXHIBIT A

[ORIGINAL CERTIFICATE OF TRUST]
A-1

DECLARATION

AMENDED AND RESTATED DECLARATION OF TRUST

EXHIBIT B

FORM OF CORPORATE HITS CERTIFICATE

{*For inclusion in Global Certificates only* – THIS CERTIFICATE IS A GLOBAL CERTIFICATE WITHIN THE MEANING OF THE DECLARATION HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY (THE "***DEPOSITARY***") OR ITS NOMINEE. THIS CERTIFICATE IS EXCHANGEABLE FOR CERTIFICATES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE DECLARATION AND NO TRANSFER OF THIS CERTIFICATE (OTHER THAN A TRANSFER OF THIS CERTIFICATE AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY 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, IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENTAL AGENCY AND INVOLVES INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF PRINCIPAL.

No. _____ Number of Corporate HITS:_____

CUSIP No.: 05518UAC1

ISIN: US05518UAC18

BAC Capital Trust XIII

Corporate HITS

This Corporate HITS Certificate certifies that **[_____]** is the registered Holder of the number of Corporate HITS set forth above {*for inclusion in Global Certificates only* - or such other number of Corporate HITS reflected in the Schedule of Increases and Decreases in the Global Certificate attached hereto}. Each Corporate HITS represents a beneficial interest in BAC Capital Trust XIII (the "***Trust***"), having a Liquidation Amount of $1,000. The Corporate HITS 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 as provided in Section 5.4 of the Declaration (as defined below). The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Corporate

HITS are set forth in, and this certificate and the Corporate HITS represented hereby are issued and shall in all respects be subject to the terms and provisions of the Amended and Restated Declaration of Trust of the Amended and Restated Declaration of Trust, dated as of February 16, 2007, as the same may be amended and restated from time to time (the **"*Declaration*"**), including the designation of the terms of the Preferred HITS as set forth therein. The Holder is entitled to the benefits of the Guarantee Agreement entered into by the Sponsor and The Bank of New York, as Guarantee Trustee, dated as of February 16, 2007 (the **"*Guarantee Agreement*"**). All capitalized terms used herein that are defined in the Declaration have the meaning set forth therein.

Section 5.13(d) of the Declaration provides for the procedures pursuant to which Holders of Corporate HITS and Treasury HITS may exchange Corporate HITS and Treasury HITS for Preferred HITS and Qualifying Treasury Securities and Section 5.14(f) of the Declaration provides for the procedures pursuant to which Holders of Corporate HITS may elect to exchange Corporate HITS in the event a Remarketing is Successful. The forms of Recombination Notice and Request and Notice of Contingent Disposition Election required to be delivered in connection therewith are printed on the reverse hereof.

A copy of each of the Declaration and the Guarantee Agreement is available for inspection at the offices of the Property Trustee.

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

IN WITNESS WHEREOF, the Trust acting through one of its Regular Trustees has executed this Corporate HITS Certificate.

BAC CAPITAL TRUST XIII, acting through one of its Regular Trustees

By: _____
Name: _____
Date: _____

CERTIFICATE OF AUTHENTICATION

This certificate represents the Corporate HITS referred to in the within-mentioned Declaration.

Dated:

THE BANK OF NEW YORK TRUST COMPANY, N.A.,
as Securities Registrar

By: _____
Authorized Signatory

Distributions payable on each Corporate HITS will be set at, (i) with respect to the period from the Closing Date to but not including the Remarketing Settlement Date for a Successful Remarketing or, in the event of a Failed Remarketing, to the Stock Purchase Date, Three-Month LIBOR plus 0.25% per annum (calculated on an Actual/360 Basis), and (ii) thereafter for so long as Corporate HITS remain outstanding, the rate per annum corresponding to interest payments by the Corporation on the Notes (the "***Coupon Rate***"). The Coupon Rate is payable on the stated liquidation amount of $1,000 per Corporate HITS, 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 will bear interest thereon (to the extent permitted by applicable law) at the Coupon Rate, compounded quarterly. The amount of Distributions payable for any period will be computed on the basis of a 360-day year and the number of days actually elapsed.

Except as otherwise described below, Distributions on the Corporate HITS will be cumulative, will accrue from the date of original issuance and will be payable quarterly in arrears on (i) each March 15, June 15, September 15 and December 15, commencing on the later of the first such date on which Corporate HITS are Outstanding and June 15, 2007 and continuing through and including the last such date to occur prior to the Remarketing Settlement Date for a Successful Remarketing, and (ii) thereafter for so long as Corporate HITS remain outstanding, each day that is an interest payment date for the Notes (each a "***Distribution Date***"), to the Person in whose name the Corporate HITS is registered at the close of business on the regular record date for such installment, which will be the last day of the month immediately preceding the month in which the Distribution Date falls. The Trust will make Distributions on the Corporate HITS only to the extent it has received payments from the Sponsor on the Corresponding Assets. The Sponsor has the right to defer payments on the Corresponding Assets from time to time and in the event of such deferral, Distributions will also be deferred for the same period.

THE CORPORATE HITS SHALL BE REDEEMABLE AS PROVIDED IN THE DECLARATION.

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this instrument, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM:	as tenants in common
UNIF GIFT MIN ACT:	_____ Custodian _____ (cust)(minor) Under Uniform Gifts to Minors Act of _____
TENANT:	as tenants by the entireties
JT TEN:	as joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used though not in the above list.

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto

(Please insert Social Security or Taxpayer I.D.
or other Identifying Number of Assignee)

(Please print or type name and address including Postal Zip Code of Assignee)

the within Corporate HITS Certificates and all rights thereunder, hereby irrevocably constituting and appointing attorney_____, to transfer said Corporate HITS Certificates on the books of BAC Capital Trust XIII, with full power of substitution in the premises.

Dated: Signature

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS IT APPEARS UPON THE FACE OF THE WITHIN CORPORATE HITS CERTIFICATES IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.

SIGNATURE GUARANTEE: _____

FORM OF RECOMBINATION NOTICE AND REQUEST

The Bank of New York Trust Company, N.A.
as Collateral Agent and Securities Registrar
10161 Centurion Parkway, 2nd Floor
Jacksonville, Florida 32256
Attention: Corporate Trust Administration

Re: Treasury and Corporate HITS of BAC Capital Trust XIII

The undersigned Holder hereby notifies you pursuant to Section 5.13(d) of the Amended and Restated Declaration of Trust, dated as of February 16, 2007, of BAC Capital Trust XIII (the "***Declaration***"), among Bank of America Corporation, as Sponsor, The Bank of New York, as Property Trustee, The Bank of New York, as Delaware Trustee, the Regular Trustees (as named therein) and the several Holders of the Trust Securities, and Section 6.03(a) of the Collateral Agreement, that the Holder:

(i) is transferring $_____ Liquidation Amount of Treasury HITS and Corporate HITS in connection with an Exchange of such Treasury HITS and Corporate HITS for a Like Amount of Preferred HITS and Qualifying Treasury Securities,

(ii) hereby requests the Collateral Agent to release from the Pledge and deliver to the Holder Qualifying Treasury Securities in a principal amount equal to such Liquidation Amount, and

(iii) hereby requests the delivery to the Holder of such Preferred HITS of a Like Amount.

All capitalized terms used herein that are defined in the Declaration have the meaning set forth therein. The undersigned Holder has paid all applicable fees and expenses relating to such Exchange.

Date: Signature Guarantee: _____

Please print name and address of Registered Holder:

Name: Social Security or other Taxpayer Identification Number, if any:

Address:

FORM OF NOTICE OF CONTINGENT DISPOSITION ELECTION

The Bank of New York Trust Company, N.A.
as Collateral Agent and Securities Registrar
10161 Centurion Parkway, 2nd Floor
Jacksonville, Florida 32256
Attention: Corporate Trust Administration

Re: Corporate HITS of BAC Capital Trust XIII

The undersigned Holder hereby notifies you pursuant to Section 5.14(f) of the Amended and Restated Declaration of Trust, dated as of February 16, 2007, of BAC Capital Trust XIII (the **"*Declaration*"**), among Bank of America Corporation, as Sponsor, The Bank of New York, as Property Trustee, The Bank of New York, as Delaware Trustee, the Regular Trustees (as named therein) and the several Holders of the Trust Securities, and Section 8.03 of the Collateral Agreement, that the Holder:

(i) is transferring $ _____ Corporate HITS to the Securities Registrar, and

(ii) hereby requests the payment to the Holder, if the upcoming Remarketing is Successful, of an amount in cash for each such Corporate HITS equal to the proceeds of the sale of $1,000 principal amount of Notes, it being understood that if such Remarketing is not Successful, this Notice shall be disregarded.

All capitalized terms used herein that are defined in the Declaration have the meaning set forth therein. The undersigned Holder has paid all applicable fees and expenses relating to such Contingent Disposition Election.

Date: Signature Guarantee: _____

Please print name and address of Registered Holder:

Name: Social Security or other Taxpayer Identification Number, if any:

Address:

{TO BE ATTACHED TO GLOBAL CERTIFICATES}

SCHEDULE OF INCREASES AND DECREASES IN GLOBAL CERTIFICATE

The following increases or decreases in this Global Certificate have been made:

Amount of increase in Number of Corporate HITS evidenced by this Global Certificate	Amount of decrease in Number of Corporate HITS evidenced by this Global Certificate	Number of Corporate HITS evidenced by this Global Certificate following such decrease or increase	Signature of authorized signatory of Securities Registrar

FORM OF TRUST COMMON SECURITIES 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 144 UNDER THE ACT. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD OR OTHERWISE TRANSFERRED EXCEPT TO A DIRECT OR INDIRECT SUBSIDIARY OF THE SPONSOR IN ACCORDANCE WITH SECTION 5.10 OF THE DECLARATION.

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, IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENTAL AGENCY AND INVOLVES INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF PRINCIPAL.

No. _____

BAC Capital Trust XIII

100
Common Securities
(liquidation amount $1,000 per Common Security)

BAC CAPITAL TRUST XIII, a statutory trust formed under the laws of the State of Delaware (the "***Trust***"), hereby certifies that Bank of America Corporation, a Delaware corporation (the "***Holder***"), is the registered owner of 100 common securities of the Trust representing undivided common beneficial interests in the assets of the Trust designated the BAC Capital Trust XIII Floating Rate Common Securities (liquidation amount $1,000 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 February 16, 2007, as the same may be amended from time to time (the "***Declaration***"), including the designation of the terms of the Common Securities as set forth in 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 Trust Common

Securities Guarantee Agreement 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 Guarantee Agreement 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.

IN WITNESS WHEREOF, the Trust acting through one of its Regular Trustees has executed this certificate.

BAC CAPITAL TRUST XIII

By: _____
Name:
Date:

CERTIFICATE OF AUTHENTICATION

This certificate represents the Common Securities referred to in the within-mentioned Declaration.

Dated:

THE BANK OF NEW YORK TRUST COMPANY, N.A.,
as Securities Registrar

By: _____
Authorized Signatory

Distributions payable on each Common Security will be payable (i) from the date of issuance to the later of March 15, 2012 and the Stock Purchase Date, at a rate per annum equal to Three-Month LIBOR plus 0.40% and (ii) thereafter, at a rate per annum equal to the greater of (A) Three-Month LIBOR plus 0.40% and (B) 4.00% (the "***Coupon Rate***") of the stated liquidation amount of $1,000 per Common Security. Distributions in arrears will continue to accumulate at the same rate compounded quarterly. 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 and the number of days actually elapsed.

Except as otherwise described below, Distributions on the Common Securities will accrue from the date of original issuance and will be payable quarterly in arrears on March 15, June 15, September 15 and December 15 of each year, beginning on June 15, 2007 (each a "***Distribution Date***"), and on the Stock Purchase Date if not otherwise a regular Distribution Date, to Holders of record on the last day of the month immediately prior to such payment dates, which payment dates shall correspond to the interest payment dates on the Notes. Distributions shall be cumulative for each Regular Distribution Date to and including the Stock Purchase Date and non-cumulative thereafter. The Sponsor has the right to defer payments on the Corresponding Assets from time to time and in the event of such deferral, Distributions will also be deferred from the same period.

THE COMMON SECURITIES SHALL BE REDEEMABLE AS PROVIDED IN THE DECLARATION.

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[2]: _____

[2] 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.

EXHIBIT D

FORM OF PREFERRED HITS CERTIFICATE

{*For inclusion in Global Certificates only* – THIS CERTIFICATE IS A GLOBAL CERTIFICATE WITHIN THE MEANING OF THE DECLARATION HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY (THE "***DEPOSITARY***") OR ITS NOMINEE. THIS CERTIFICATE IS EXCHANGEABLE FOR CERTIFICATES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE DECLARATION AND NO TRANSFER OF THIS CERTIFICATE (OTHER THAN A TRANSFER OF THIS CERTIFICATE AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY 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, IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENTAL AGENCY AND INVOLVES INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF PRINCIPAL.

No. _____ Number of Preferred HITS: _____

CUSIP No.: 05518UAA5
ISIN: US05518UAA51

BAC Capital Trust XIII

Preferred HITS

This Preferred HITS Certificate certifies that **[__]** is the registered Holder of the number of Preferred HITS set forth above {*for inclusion in Global Certificates only* - or such other number of Preferred HITS reflected in the Schedule of Increases and Decreases in the Global Certificate attached hereto}. Each Preferred HITS represents a beneficial interest in BAC Capital Trust XIII (the "***Trust***"), having a Liquidation Amount of $1,000. The Preferred HITS 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 as provided in Section 5.4 of the Declaration (as defined below). The

designations, rights, privileges, restrictions, preferences and other terms and provisions of the Preferred HITS are set forth in, and this certificate and the Preferred HITS represented hereby are issued and shall in all respects be subject to the terms and provisions of the Amended and Restated Declaration of Trust, dated as of February 16, 2007, as the same may be amended and restated from time to time (the "***Declaration***"), including the designation of the terms of the Preferred HITS as set forth therein. The Holder is entitled to the benefits of the Guarantee Agreement entered into by the Sponsor and The Bank of New York, as Guarantee Trustee, dated as of February 16, 2007 (the "***Guarantee Agreement***"). All capitalized terms used herein that are defined in the Declaration have the meaning set forth therein.

Section 5.13(b) of the Declaration provides for the procedures pursuant to which Holders of Preferred HITS may exchange Preferred HITS and Qualifying Treasury Securities for Treasury HITS and Corporate HITS and Section 5.14(d) of the Declaration provides for the procedures pursuant to which Holders of Preferred HITS may elect to exchange Preferred HITS and Qualifying Treasury Securities for Treasury HITS and Corporate HITS in the event a Remarketing is Successful. The forms of Splitting Notice and Request and Notice of Contingent Exchange Election required to be delivered in connection therewith are printed on the reverse hereof.

A copy of each of the Declaration and the Guarantee Agreement is available for inspection at the offices of the Property Trustee.

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

IN WITNESS WHEREOF, the Trust acting through one of its Regular Trustees has executed this Preferred HITS Certificate.

BAC CAPITAL TRUST XIII, acting through one of its Regular Trustees

By: _____
Name: _____
Date: _____

CERTIFICATE OF AUTHENTICATION

This certificate represents the Preferred HITS referred to in the within-mentioned Declaration.

Dated:

THE BANK OF NEW YORK TRUST COMPANY, N.A.,
as Securities Registrar

By: _____
Authorized Signatory

Distributions payable on each Preferred HITS will be set at, (i) from the Closing Date to but not including the later of March 15, 2012 and the Stock Purchase Date (and for each related Distribution Period), Three-Month LIBOR plus 0.40% per annum (calculated on an Actual/360 Basis) and (ii) thereafter, for each Distribution Period and related Regular Distribution Date, the greater of (A) Three-Month LIBOR for such Distribution Period plus 0.40% and (B) 4.00 % of the Liquidation Amount per Preferred HITS (calculated on an Actual/360 Basis) (the "***Coupon Rate***"). The Coupon Rate is payable on the stated liquidation amount of $1,000 per Preferred HITS, 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 will bear interest thereon (to the extent permitted by applicable law) at the Coupon Rate, compounded quarterly. The amount of Distributions payable for any period will be computed on the basis of a 360-day year and the number of days actually elapsed.

Except as otherwise described below, Distributions on the Preferred HITS will accrue from the date of original issuance and will be payable quarterly in arrears on (i) each March 15, June 15, September 15 and December 15 commencing June 15, 2007 (each a "***Distribution Date***"), and (ii) the Stock Purchase Date if not otherwise a Distribution Date, to the Person in whose name the Preferred HITS is registered at the close of business on the regular record date for such installment, which will be the last day of the month immediately preceding the month in which the Distribution Date falls. Distributions shall be cumulative for each Regular Distribution Date to and including the Stock Purchase Date and non-cumulative thereafter. The Trust will make Distributions on the Preferred HITS only to the extent it has received payments from the Sponsor on the Corresponding Assets. The Sponsor has the right to defer payments on the Corresponding Assets from time to time and in the event of such deferral, Distributions will also be deferred for the same period.

THE PREFERRED HITS SHALL BE REDEEMABLE AS PROVIDED IN THE DECLARATION.

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this instrument, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM:	as tenants in common
UNIF GIFT MIN ACT:	_____ Custodian _____ (cust)(minor) Under Uniform Gifts to Minors Act of _____
TENANT:	as tenants by the entireties
JT TEN:	as joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used though not in the above list.

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto

(Please insert Social Security or Taxpayer I.D.
or other Identifying Number of Assignee)

(Please print or type name and address including Postal Zip Code of Assignee)

the within Preferred HITS Certificates and all rights thereunder, hereby irrevocably constituting and appointing attorney_____, to transfer said Preferred HITS Certificates on the books of BAC Capital Trust XIII with full power of substitution in the premises.

Dated:

Signature:

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Preferred HITS Certificates in every particular, without alteration or enlargement or any change whatsoever.

Signature Guarantee:

FORM OF SPLITTING NOTICE AND REQUEST

The Bank of New York Trust Company, N.A.
as Collateral Agent and Securities Registrar
10161 Centurion Parkway, 2nd Floor
Jacksonville, Florida 32256
Attention: Corporate Trust Administration

Re: Preferred HITS of BAC Capital Trust XIII

The undersigned Holder hereby notifies you pursuant to Section 5.13(b) of the Amended and Restated Declaration of Trust, dated as of February 16, 2007, of BAC Capital Trust XIII (the "***Declaration***"), among Bank of America Corporation, as Sponsor, The Bank of New York, as Property Trustee, The Bank of New York, as Delaware Trustee, the Regular Trustees (as named therein) and the several Holders of the Trust Securities, and Section 6.02 of the Collateral Agreement, that the Holder:

(i) is depositing the appropriate Qualifying Treasury Securities with The Bank of New York Trust Company, N.A., as Collateral Agent, for deposit in the Collateral Account,

(ii) is transferring $_____ Liquidation Amount of the related Preferred HITS to the Securities Registrar in connection with an Exchange of such Preferred HITS and Qualifying Treasury Securities for a Like Amount of Treasury HITS and Corporate HITS, and

(iii) hereby requests the delivery to the Holder of such Treasury HITS and Corporate HITS.

All capitalized terms used herein that are defined in the Declaration have the meaning set forth therein. The undersigned Holder has paid all applicable fees and expenses relating to such Exchange.

Date: Signature Guarantee:

Please print name and address of Registered Holder:

Name: Social Security or other Taxpayer Identification Number, if any:

Address:

FORM OF NOTICE OF CONTINGENT EXCHANGE ELECTION

The Bank of New York Trust Company, N.A.
as Collateral Agent and Securities Registrar
10161 Centurion Parkway, 2nd Floor
Jacksonville, Florida 32256
Attention: Corporate Trust Administration

Re: Preferred HITS of BAC Capital Trust XIII

The undersigned Holder hereby notifies you pursuant to Section 5.14(d) of the Amended and Restated Declaration of Trust, dated as of February 16, 2007, of BAC Capital Trust XIII (the "***Declaration***"), among Bank of America Corporation, as Sponsor, The Bank of New York, as Property Trustee, The Bank of New York, as Delaware Trustee, the Regular Trustees (as named therein) and the several Holders of the Trust Securities, and Section 8.02 of the Collateral Agreement, that the Holder:

(i) is depositing the appropriate Qualifying Treasury Securities with The Bank of New York Trust Company, N.A., as Collateral Agent, for deposit in the Collateral Account,

(ii) is transferring $_____ Liquidation Amount of the related Preferred HITS to the Securities Registrar in connection with a Contingent Exchange Election of such Preferred HITS and Qualifying Treasury Securities for a Like Amount of Treasury HITS and Corporate HITS, and

(iii) hereby requests the delivery to the Holder of such Treasury HITS and Corporate HITS if the upcoming Remarketing is Successful, it being understood that if such Remarketing is not Successful, this Notice shall be disregarded and the Collateral Agent shall return such Qualifying Treasury Securities to the Holder promptly after the Remarketing.

All capitalized terms used herein that are defined in the Declaration have the meaning set forth therein. The undersigned Holder has paid all applicable fees and expenses relating to such Contingent Exchange Election.

Date: Signature Guarantee:

Please print name and address of Registered Holder:

Name: Social Security or other Taxpayer Identification Number, if any:

Address:

{TO BE ATTACHED TO GLOBAL CERTIFICATES}

SCHEDULE OF INCREASES AND DECREASES IN GLOBAL CERTIFICATE

The following increases or decreases in this Global Certificate have been made:

Amount of increase in Number of Preferred HITS evidenced by this Global Certificate	Amount of decrease in Number of Preferred HITS evidenced by this Global Certificate	Number of Preferred HITS evidenced by this Global Certificate following such decrease or increase	Signature of authorized signatory of Securities Registrar

EXHIBIT E

FORM OF TREASURY HITS CERTIFICATE

{*For inclusion in Global Certificates only* – THIS CERTIFICATE IS A GLOBAL CERTIFICATE WITHIN THE MEANING OF THE DECLARATION HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY (THE "***DEPOSITARY***") OR ITS NOMINEE. THIS CERTIFICATE IS EXCHANGEABLE FOR CERTIFICATES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE DECLARATION AND NO TRANSFER OF THIS CERTIFICATE (OTHER THAN A TRANSFER OF THIS CERTIFICATE AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY 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, IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENTAL AGENCY AND INVOLVES INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF PRINCIPAL.

No. _____ Number of Preferred HITS: _____

CUSIP No.: 05518UAB3

ISIN: US05518UAB35

BAC Capital Trust XIII

Treasury HITS

This Treasury HITS Certificate certifies that **[_____]** is the registered Holder of the number of Treasury HITS set forth above {*for inclusion in Global Certificates only* - or such other number of Treasury HITS reflected in the Schedule of Increases and Decreases in the Global Certificate attached hereto}. Each Treasury HITS represents a beneficial interest in BAC Capital Trust XIII (the "***Trust***"), having a Liquidation Amount of $1,000. The Treasury HITS 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 as provided in Section 5.4 of the Declaration (as defined below). The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Treasury HITS are set forth in, and this certificate and the Treasury HITS represented hereby are issued and shall in all respects be subject to the terms and provisions of the Amended and Restated Declaration of Trust of

the Trust, dated as of February 16, 2007, as the same may be amended and restated from time to time (the "***Declaration***"), including the designation of the terms of the Treasury HITS as set forth therein. The Holder is entitled to the benefits of the Guarantee Agreement entered into by the Sponsor and The Bank of New York, as Guarantee Trustee, dated as of February 16, 2007 (the "***Guarantee Agreement***"). All capitalized terms used herein that are defined in the Declaration have the meaning set forth therein.

Section 5.13(d) of the Declaration provides for the procedures pursuant to which Holders of Corporate HITS and Treasury HITS may exchange them for Preferred HITS and Qualifying Treasury Securities. The form of Recombination Notice and Request required to be delivered in connection therewith is printed on the reverse hereof.

A copy of each of the Declaration and the Guarantee Agreement is available for inspection at the offices of the Property Trustee.

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

IN WITNESS WHEREOF, the Trust acting through one of its Regular Trustees has executed this Treasury HITS Certificate.

BAC CAPITAL TRUST XIII, acting through one of
its Regular Trustees

By: _____
Name: _____
Date: _____

CERTIFICATE OF AUTHENTICATION

This certificate represents the Treasury HITS referred to in the within-mentioned Declaration.

Dated:

THE BANK OF NEW YORK TRUST COMPANY, N.A.,
as Securities Registrar

By: _____
Authorized Signatory

Distributions payable on each Treasury HITS will be set at 0.15% per annum accruing for each Treasury HITS from the Regular Distribution Date immediately preceding its issuance, on a cumulative basis (the "***Coupon Rate***"). The Coupon Rate is payable on the stated liquidation amount of $1,000 per Treasury HITS, such rate being the rate of Contract Payments payable with respect to the Notes to be held by the Property Trustee on behalf of the Trust. In addition, additional Distributions constituting the Treasury HITS Treasury Roll Over Amount as described in the Declaration is also payable on the Treasury HITS. Distributions in arrears will bear interest thereon (to the extent permitted by applicable law) at the Coupon Rate, compounded quarterly. The amount of Distributions payable for any period will be computed on the basis of a 360-day year and the number of days actually elapsed.

Except as otherwise described below, Distributions on the Treasury HITS will be cumulative, will accrue from the date of original issuance and will be payable quarterly in arrears on (i) each March 15, June 15, September 15 and December 15 commencing the first such date on which Treasury HITS are outstanding (each a "***Distribution Date***"), and (ii) the Stock Purchase Date if not otherwise a Distribution Date (*provided*, *however*, that in any event the last Distribution Date for the Treasury HITS shall be the Stock Purchase Date), to the Person in whose name the Treasury HITS is registered at the close of business on the regular record date for such installment, which will be the last day of the month immediately preceding the month in which the Distribution Date falls. The Trust will make Distributions on the Treasury HITS only to the extent it has received payments from the Sponsor on the Corresponding Assets. The Sponsor has the right to defer payments on the Corresponding Assets from time to time and in the event of such deferral, Distributions will also be deferred for the same period.

THE TREASURY HITS SHALL BE REDEEMABLE AS PROVIDED IN THE DECLARATION.

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this instrument, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM:	as tenants in common
UNIF GIFT MIN ACT:	_____ Custodian _____ (cust)(minor) Under Uniform Gifts to Minors Act of _____
TENANT:	as tenants by the entireties
JT TEN:	as joint tenants with right of survivorship and not as tenants in common

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto

(Please insert Social Security or Taxpayer I.D.
or other Identifying Number of Assignee)

(Please print or type name and address including Postal Zip Code of Assignee)

the within Treasury HITS Certificates and all rights thereunder, hereby irrevocably constituting and appointing attorney , to transfer said Treasury HITS Certificates on the books of BAC Capital Trust XIII, with full power of substitution in the premises.

Dated:

Signature

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Treasury HITS Certificates in every particular, without alteration or enlargement or any change whatsoever.

SIGNATURE GUARANTEE:

FORM OF RECOMBINATION NOTICE AND REQUEST

The Bank of New York Trust Company, N.A.
as Collateral Agent and Securities Registrar
10161 Centurion Parkway, 2nd Floor
Jacksonville, Florida 32256
Attention: Corporate Trust Administration

Re: Treasury HITS and Corporate HITS of BAC Capital Trust XIII

The undersigned Holder hereby notifies you pursuant to Section 5.13(d) of the Amended and Restated Declaration of Trust, dated as of February 16, 2007, of BAC Capital Trust XIII (the "***Declaration***"), among Bank of America Corporation, as Sponsor, The Bank of New York, as Property Trustee, The Bank of New York, as Delaware Trustee, the Regular Trustees (as named therein) and the several Holders of the Trust Securities, and Section 6.03 of the Collateral Agreement, that the Holder:

(i) is transferring $_____ Liquidation Amount of Treasury HITS and Corporate HITS in connection with an Exchange of such Treasury HITS and Corporate HITS for a Like Amount of Preferred HITS and Qualifying Treasury Securities,

(ii) hereby requests the Collateral Agent to release from the Pledge and deliver to the Holder Qualifying Treasury Securities in a principal amount equal to such Liquidation Amount, and

(iii) hereby requests the delivery to the Holder of such Preferred HITS of a Like Amount.

All capitalized terms used herein that are defined in the Declaration have the meaning set forth therein. The undersigned Holder has paid all applicable fees and expenses relating to such Exchange.

Date: Signature Guarantee:

Please print name and address of Registered Holder:

Name: Social Security or other Taxpayer Identification Number, if any:

Address:

{TO BE ATTACHED TO GLOBAL CERTIFICATES}

SCHEDULE OF INCREASES AND DECREASES IN GLOBAL CERTIFICATE

The following increases or decreases in this Global Certificate have been made:

Amount of increase in Number of Treasury HITS evidenced by this Global Certificate	Amount of decrease in Number of Treasury HITS evidenced by this Global Certificate	Number of Treasury HITS evidenced by this Global Certificate following such decrease or increase	Signature of authorized signatory of Securities Registrar

Exhibit 4.5

Execution Version

Amended and Restated Declaration of Trust

among

Bank of America Corporation,
as Sponsor,

The Bank of New York,
as Property Trustee,

The Bank of New York (Delaware),
as Delaware Trustee,

the Regular Trustees (as named herein),

and the several Holders of the Trust Securities

Dated as of February 16, 2007

of

BAC Capital Trust XIV

Bank of America Corporation
Certain Sections of this Declaration relating to Section 310 through 318,
inclusive, of the Trust
Indenture Act of 1939:

Trust Indenture Act Section		Declaration Section
§ 310	(a)(1)	8.7
	(a)(2)	8.7
	(a)(3)	8.9
	(a)(4)	2.7(a)(ii)
	(b)	8.8
	(c)	Not applicable
§ 311	(a)	8.13
	(b)	8.13
§ 312	(a)	5.7
	(b)	5.7
	(c)	5.7
§ 313	(a)	8.15(a), 8.15(b)
	(b)	8.15(b)
	(c)	12.8
	(d)	8.15(c)
§ 314	(a)	8.16
	(b)	Not applicable
	(c)(1)	8.17
	(c)(2)	8.17
	(c)(3)	Not applicable
	(d)	Not applicable
	(e)	1.1, 8.17
§ 315	(a)	8.1(a), 8.3(a)
	(b)	8.2, 12.8
	(c)	8.1(d)
	(d)	8.1(e), 8.3
	(e)	Not applicable
§ 316	(a)	Not applicable
	(a)(1)(A)	Not applicable
	(a)(1)(B)	5.16(e)
	(a)(2)	Not applicable
	(b)	5.16
	(c)	6.8
§ 317	(a)(1)	Not applicable
	(a)(2)	8.14
	(b)	5.9
§ 318	(a)	12.10
	(b)	12.10

Note: This reconciliation and tie shall not, for any purpose be deemed to be part of the Declaration.

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Exhibit E — Form of Treasury HITS Certificate

AMENDED AND RESTATED
DECLARATION OF TRUST
OF
BAC CAPITAL TRUST XIV

THIS AMENDED AND RESTATED DECLARATION OF TRUST ("*Declaration*") dated and effective as of February 16, 2007 by and among (i) Bank of America Corporation, a Delaware corporation (including any successors or assigns, the "*Sponsor*" or "*Corporation*"), (ii) The Bank of New York , a New York banking corporation, as property trustee (in such capacity, the "*Property Trustee*"), (iii) The Bank of New York (Delaware), a Delaware banking corporation, as Delaware trustee (in such capacity, the "*Delaware Trustee*"), (iv) James T. Houghton, Richard L. Nichols, Jr., and Ann J. Travis (and their respective successors), each an individual whose addresses are c/o Bank of America Corporation, NC1-007-07-06, 100 North Tryon Street, Charlotte, North Carolina, 28255, Attention: Corporate Treasury (each, a "*Regular Trustee*," and collectively, the "*Regular Trustees*") (the Property Trustee, the Delaware Trustee, and the Regular Trustees being referred to collectively as the "*Trustees*"), and (v) the holders, from time to time, of undivided beneficial interests in the assets of the Trust (as defined in the following paragraph) to be issued pursuant to this Declaration;

WHEREAS, the Delaware Trustee, the Sponsor and Karen A. Gosnell and James T. Houghton, as initial Regular Trustees, established BAC CAPITAL TRUST XIV (the "*Trust*"), a trust under the Delaware Statutory Trust Act, pursuant to a Declaration of Trust dated as of May 3, 2006 (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 the Notes;

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

WHEREAS, the Corporation and the Trustees desire to amend and restate the Declaration in its entirety as set forth herein to provide for, among other things, (i) the issuance of the Common Securities by the Trust to the Corporation, (ii) the issuance of Preferred HITS by the Trust and their offer and sale in a public offering pursuant to the Underwriting Agreement, (iii) the issuance of Treasury HITS and Corporate HITS in Exchange for Preferred HITS as provided in Section 5.13, (iv) the acquisition by the Trust from the Corporation of all of the right, title and interest in the Notes, and (v) the entering into by the Trust with the Corporation of the Stock Purchase Contract Agreement and, pursuant to the Stock Purchase Contracts evidenced by that agreement, the purchase by the Trust of shares of Preferred Stock on the Stock Purchase Date;

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 statutory trust under the Delaware Statutory Trust Act and that this Declaration constitute the governing instrument of such statutory trust, the Trustees declare that all assets contributed to the Trust will be held in trust for the benefit of the holders, from time to time, of the securities representing undivided beneficial interests in the assets of the Trust issued hereunder, subject to the provisions of this Declaration.

ARTICLE I

DEFINED TERMS

Section 1.1 *Definitions.*

For all purposes of this Declaration, except as otherwise expressly provided or unless the context otherwise requires:

(i) The terms defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular.

(ii) All other terms used herein that are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein.

(iii) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles, and the term "generally accepted accounting principles" with respect to any computation required or permitted hereunder shall mean such accounting principles that are generally accepted at the date or time of such computation; *provided* that when two or more principles are so generally accepted, it shall mean that set of principles consistent with those in use by the Corporation.

(iv) The words "hereby", "hereof" and "hereunder" and other words of similar import refer to this Declaration as a whole and not to any particular Article, Section or other subdivision.

"*Act*" has the meaning specified in Section 6.9.

"*Actual/360 Basis*" means, for purposes of calculating the rate of Distributions, such rate calculated on the basis of a 360-day year and the number of days actually elapsed.

"*Additional Distribution Date*" means each March 15, June 15, September 15 and December 15 commencing on the later of the first such date on which Treasury HITS are Outstanding and June 15, 2007 (or, if any such day is not a Business Day, the next succeeding Business Day).

"*Affected Class(es)*" means, (i) if a proposed action or inaction or Event of Default or other relevant circumstance relates solely and specifically to Trust Property, each Class for which such Trust Property is a Corresponding Asset, (ii) if a proposed action or inaction or Event of Default or other relevant circumstance does not relate specifically and solely to Trust Property, then each Class that could reasonably be expected to be affected by the action proposed or inaction or Event of Default, and (iii) for purposes of Section 5.16 at any time, the Classes of HITS for which Notes at such time are Corresponding Assets (that is, (A) for purposes of Sections 5.16(b) and 5.16(c), until the Remarketing Settlement Date, the Preferred HITS and the Corporate HITS and, thereafter, the Corporate HITS, (B) for purposes of Section 5.16(d), the Preferred HITS and the Treasury HITS, and (C) for purposes of Section 5.16(e), (I) if the Event of Default is of the type referred to in clause (a) of the definition of that term, the Preferred HITS and the Corporate HITS until the Remarketing Settlement Date and the Corporate HITS thereafter, (II) if the Event of Default is of the type described in paragraph (b) of the definition of that term, the Preferred HITS and Treasury HITS, (III) if the Event of Default is of the type described in clause (d) of the definition of that term, the Classes of HITS that were to have been redeemed, and (IV) if the Event of Default is of the type described in any of clause (c), (e) or (f) of the definition of that term, each Class of HITS then outstanding).

"*Affiliate*" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"*Authorized Officer*" of any Person means any officer of such Person or any Person authorized by or pursuant to a resolution of the Board of Directors of such Person.

"Bank of America Deposit" has the meaning specified in the Stock Purchase Contract Agreement.

"*Bankruptcy Event*" means, with respect to any Person:

(a) the entry of a decree or order by a court having jurisdiction in the premises judging such Person a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjudication or composition of or in respect of such Person under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law, or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of such Person or of any substantial part of its property or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days; or

(b) the institution by such Person of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or similar official) of such Person or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due and its willingness to be adjudicated a bankrupt, or the taking of corporate action by such Person in furtherance of any such action.

"*Bankruptcy Laws*" has the meaning specified in Section 12.9.

"Base Indenture" means the Restated Junior Subordinated Debt Securities Indenture dated as of November 1, 2001 between the Corporation and The Bank of New York Trust Company, N.A., as successor trustee.

"*Board of Directors*" means either the board of directors of any Person or any committee of that board of directors duly authorized to act.

"*Book-Entry Transfer*" means:

(a) as to HITS represented by Book-Entry HITS Certificates and as to Notes represented by global certificates that settle and clear through a Clearing Agency's system, transfer or delivery in accordance with the rules and procedures of the applicable Clearing Agency (including, in the case of DTC if it is the Clearing Agency, book-entry deliveries through DTC's Deposit/Withdrawal at Custodian DWAC system); and

(b) as to U.S. Treasury securities (including Qualifying Treasury Securities), transfer or delivery in accordance with the regulations of the United States Department of the Treasury governing book-entry treasury securities, including those currently at 12 C.F.R. Part 357.

"*Book-Entry HITS*" means HITS the ownership and transfers of which shall be made through book entries by a Clearing Agency as provided in Section 5.11.

"*Book-Entry HITS Certificate*" means a HITS Certificate evidencing ownership of Book-Entry HITS.

"*Business Day*" means a day other than a Saturday, a Sunday, or any other day on which banking institutions and trust companies in New York, New York or Charlotte, North Carolina are authorized or required by any applicable law to close.

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

"*Certificate*" means a Corporate HITS Certificate, a Preferred HITS Certificate, a Treasury HITS Certificate or a Common Securities Certificate.

"*Certificate Custodian*" means, with respect to the HITS of a Class, the Securities Registrar, as custodian with respect to the Book-Entry HITS Certificates representing the HITS of such Class, or any successor entity thereto.

"*Certificate of Designations*" means the "Certificate of Designations of Adjustable Rate Non-Cumulative Preferred Stock, Series G of Bank of America Corporation", dated February 15, 2007, setting forth the resolutions of the Corporation's Board of Directors fixing the designations, voting powers, preferences and relative, participating and other special rights, and qualifications, limitations and restrictions thereof of the shares of the Preferred Stock as a new series of the Corporation's preferred stock.

"*Certificate of Trust*" has the meaning specified in the recitals hereof, as amended from time to time.

"*Class*" means each of the Preferred HITS, the Treasury HITS, the Corporate HITS and the Common Securities, each as a class of beneficial interests in the Trust.

"*Clearing Agency*" means an organization registered as a "clearing agency" pursuant to Section 17A of the Exchange Act. DTC will be the initial Clearing Agency.

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

"*Closing Date*" means February 16, 2007, which date also is the date of execution and delivery of this Declaration.

"*Collateral Account*" has the meaning specified in the Collateral Agreement.

"*Collateral Agent*" means The Bank of New York Trust Company, N.A., as Collateral Agent under the Collateral Agreement until a successor Collateral Agent shall have been appointed and qualified pursuant to the applicable provisions of the Collateral Agreement, and thereafter "Collateral Agent" shall mean the Person who is then the Collateral Agent thereunder.

"*Collateral Agreement*" means the Collateral Agreement, dated as of the date hereof, among the Corporation, the Collateral Agent, the Custodial Agent, the Securities Intermediary, the Trust (acting through the Property Trustee) and the Securities Registrar for the HITS, as amended from time to time.

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

"*Common Securities Certificate*" means a certificate evidencing ownership of Common Securities, substantially in the form attached as Exhibit C.

"*Common Security*" means a beneficial interest in the Trust, having a Liquidation Amount of $1,000 and having the rights provided therefor in this Declaration, including the right to receive Distributions and a Liquidation Distribution as provided herein.

"*Contingent Disposition Election*" has the meaning specified in Section 5.14(a)(ii).

"*Contingent Exchange Election*" has the meaning specified in Section 5.14(a)(i).

"*Contract Payments*" has the meaning specified in the Stock Purchase Contract Agreement.

"*Corporate HITS*" means a beneficial interest in the Trust, having a Liquidation Amount of $1,000 per Corporate HITS and having the rights provided for Corporate HITS in this Declaration, including the right to receive Distributions and a Liquidation Distribution as provided herein.

"*Corporate HITS Certificate*" means a certificate evidencing ownership of Corporate HITS, substantially in the form attached as Exhibit B.

"*Corporate HITS Distribution Date*" means (i) each March 15 and September 15, commencing on the later of the first such date on which Corporate HITS are Outstanding and September 15, 2007 and continuing through and including the last such date to occur prior to the Remarketing Settlement Date for a Successful Remarketing, and (ii) thereafter for so long as Corporate HITS remain outstanding, each day that is an interest payment date for the Notes.

"*Corporate HITS Distribution Rate*" means (i) from the Closing Date to but not including the Remarketing Settlement Date for a Successful Remarketing or, in the event of a Failed Remarketing, the Stock Purchase Date, 5.48% per annum (calculated on a 30/360 Basis), and (ii) thereafter for so long as Corporate HITS remain outstanding, the rate per annum corresponding to interest payments by the Corporation on the Notes.

"*Corporate HITS Redemption Date*" means, with respect to any Corporate HITS to be redeemed, the date fixed for such redemption by or pursuant to this Declaration; *provided* that (i) each Note Redemption Date shall be a Corporate HITS Redemption Date for a Like Amount of Corporate HITS and (ii) if a Successful Remarketing occurs, the first Business Day after the Stock Purchase Date shall be a Corporate HITS Redemption Date for a redemption in kind pursuant to Section 4.2(c).

"*Corporate HITS Redemption Price*" means, with respect to a redemption of Corporate HITS for a Redemption Price payable in cash pursuant to Section 4.2(b) and the related Corporate HITS Redemption Date, the redemption price for a Like Amount of Notes redeemed on such date in accordance with the Indenture.

"*Corresponding Assets*" means, with respect to each $1,000 Liquidation Amount of Trust Securities:

(a) in the case of Preferred HITS and Common Securities, (i) from the Time of Delivery to but not including the Remarketing Settlement Date for a Successful Remarketing, $1,000 principal amount of Pledged Notes and a $^{1}/_{100}$th interest in a Stock Purchase Contract, (ii) from and including the Remarketing Settlement Date for a Successful Remarketing to but not including the Stock Purchase Date, the Bank of America Deposit made with the net proceeds of each $1,000 principal amount of Pledged Notes sold in such Successful Remarketing on such Remarketing Settlement Date and a $^{1}/_{100}$th interest in a Stock Purchase Contract, and (iii) from and including the Stock Purchase Date and thereafter for so long as Preferred HITS are outstanding, $^{1}/_{100}$th of a share of Preferred Stock;

(b) in the case of Treasury HITS, (i) from the date of issuance for each Treasury HITS to but not including the Stock Purchase Date, $1,000 principal amount of Pledged Treasury Securities and a $^{1}/_{100}$th interest in a Stock Purchase Contract, and (ii) from and including the Stock Purchase Date and thereafter for so long as Treasury HITS are outstanding, $^{1}/_{100}$th of a share of Preferred Stock, subject to Section 4.8; and

(c) in the case of Corporate HITS, from the date of issuance for each Corporate HITS, $1,000 principal amount of Notes, subject to Section 5.14.

"Corporate Trust Office" means when used with respect to each of the Property Trustee and the Note Trustee, the principal office which at any particular time such entity's corporate trust business shall be principally administered, which office at the date hereof is located at, (i) with respect to the Property Trustee, The Bank of New York, 101 Barclay Street, 8 West, New York, New York 10286, facsimile: (904) 645-1921, Attention: Corporate Trust Administration and (ii) with respect to the Note Trustee, the Bank of New York Trust Company, N.A., 10161 Centurion Parkway, 2nd Floor, Jacksonville, Florida 32256, facsimile: (904) 645-1921, Attention: Corporate Trust Administration.

"*Custodial Agent*" means The Bank of New York Trust Company, N.A., as Custodial Agent under the Collateral Agreement until a successor Custodial Agent shall have become such pursuant to the applicable provisions of the Collateral Agreement, and thereafter "Custodial Agent" shall mean the Person who is then the Custodial Agent thereunder.

"*Custody Account*" has the meaning specified in the Collateral Agreement.

"*Declaration*" means this Amended and Restated Declaration, as the same may be modified, amended or supplemented in accordance with the applicable provisions hereof, including (i) all exhibits, and (ii) for all purposes of this Declaration and any such modification, amendment or supplement, the provisions of the Trust Indenture Act that are deemed to be a part of and govern this Declaration and any such modification, amendment or supplement, respectively.

"*Deferred Contract Payment Amount*" means, at any time for each $100,000 stated amount of Stock Purchase Contracts, the amount of the Contract Payments accrued on such stated amount that has been deferred and not paid by reason of the Sponsor's exercise of its right to defer payment of Contract Payments pursuant to Section 2.7 of the Stock Purchase Contract Agreement, together with interest accrued on such amount in accordance with the terms of the Stock Purchase Contract Agreement.

"*Deferred Note Interest Amount*" means, at any time for each $1,000 principal amount of Notes, the amount of interest accrued on such principal amount that has been deferred and not paid by reason of the Corporation's exercise of its right to defer payment of interest pursuant to Section 2.13 of the Base Indenture or Section 2.7 of the Fourteenth Supplemental Indenture, together with interest accrued on such amount in accordance with the terms of the Indenture and the Fourteenth Supplemental Indenture.

"*Definitive HITS Certificates*" means either or both (as the context requires) of (i) HITS Certificates issued as Book-Entry HITS Certificates as provided in Section 5.11, and (ii) HITS Certificates issued in certificated, fully registered form as provided in Sections 5.11(d) through 5.11(f) or Section 5.15.

"*Delaware Statutory Trust Act*" means Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. ss. 3801*et seq*., as it may be amended from time to time.

"*Delaware Trustee*" means the Person identified as the "Delaware Trustee" in the preamble to this Declaration, solely in its capacity as Delaware Trustee of the Trust and not in its individual capacity, or its successor in interest in such capacity, or any successor Delaware trustee appointed as herein provided.

"*Direct Action*" has the meaning specified in Section 5.16(c) and Section 5.16(d).

"*Distribution Date*" means an Additional Distribution Date, a Corporate HITS Distribution Date or a Regular Distribution Date.

"*Distribution Period*" means:

(i) with respect to Preferred HITS, Treasury HITS and Common Securities, each period of time beginning on a Regular Distribution Date (or the Closing Date in the case of the Distribution Period ending in September 2007) and continuing to but not including the next succeeding Regular Distribution Date for such Class; and

(ii) with respect to Corporate HITS, each period of time beginning on a Corporate HITS Distribution Date (or the Closing Date in the case of the Distribution Period ending in September 2007) and continuing to but not including the next succeeding Corporate HITS Distribution Date.

"*Distributions*" means amounts payable in respect of the Trust Securities as provided in Section 4.1.

"*Dividend Payment Date*" has the meaning specified in the Certificate of Designations.

"*DTC*" means The Depository Trust Company.

"*Early Dissolution Event*" has the meaning specified in Section 9.2.

"*Early Settlement Event*" has the meaning specified in the Fourteenth Supplemental Indenture.

"*Event of Default*" means any one of the following events (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) the occurrence of a Note Event of Default; or

(b) the occurrence of a Preferred Stock Default; or

(c) default by the Trust in the payment of any Distribution when it becomes due and payable, and continuation of such default for a period of 30 days; or

(d) default by the Trust in the payment of any Redemption Price of any Trust Security when it becomes due and payable; or

(e) default in the performance, or breach, in any material respect, of any covenant or warranty of the Trustees in this Declaration (other than those specified in clause (b) or (c) above) and continuation of such default or breach for a period of 90 days after there has been given, by registered or certified mail, to the Trustees and to the Sponsor by the Holders of at least 25% in aggregate Liquidation Amount of the Outstanding HITS a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(f) the occurrence of a Bankruptcy Event with respect to the Property Trustee if a successor Property Trustee has not been appointed within 90 days thereof.

"*Excess Proceeds Distribution*" means the distribution that each Holder of Treasury HITS shall receive on each Additional Distribution Date on a*pro rata* basis from the Trust of the amount by which the proceeds of the Qualifying Treasury Securities pledged by the Trust in respect of Stock Purchase Contracts maturing at least one Business Day prior to such date exceed the amount required to purchase replacement Qualifying Treasury Securities.

"*Exchange*" has the meaning specified in Section 5.13(a).

"*Exchange Act*" means the Securities Exchange Act of 1934, and any successor statute thereto, in each case as amended from time to time.

"*Exchange Period*" means the Collateral Agent's and the Securities Registrar's normal business hours on any Business Day other than (i) any day in March, June, September or December that is on or after the 1st day of such month through the 15th day of such month (or the next Business Day if the 15th day is not a Business Day) or (ii) the period from 3:00 p.m., New York City time, on the second Business Day before the first day of any Remarketing Period to but not including the Business Day after the last day of that Remarketing Period.

"*Failed Remarketing*" has the meaning specified in the Fourteenth Supplemental Indenture.

"*Federal Reserve*" means the (i) Board of Governors of the Federal Reserve System, as from time to time constituted, or if at any time after the execution of this Declaration the Federal Reserve is not

existing and performing the duties now assigned to it, then the bodies performing such duties at such time, or the Federal Reserve Bank of Richmond, or (ii) any successor Federal reserve bank (or successor body performing such duties) having primary jurisdiction over the Sponsor.

"*Final Remarketing*" has the meaning specified in the Fourteenth Supplemental Indenture.

"Fourteenth Supplemental Indenture" means the Fourteenth Supplemental Indenture to the Base Indenture, dated as of the date hereof, between the Corporation and the Note Trustee, as amended or supplemented from time to time.

"*Guarantee Agreements*" means collectively (i) the Guarantee Agreement executed and delivered by the Sponsor and The Bank of New York, as guarantee trustee, contemporaneously with the execution and delivery of this Declaration, for the benefit of the holders of the HITS, as amended from time to time; and (ii) the Trust Common Securities Guarantee Agreement by and among the Trust and the Sponsor, as guarantor for the benefit of the holders of the Trust Common Securities, as amended from time to time.

"*HITS*" means each of the Preferred HITS, the Treasury HITS and the Corporate HITS.

"*HITS Certificate*" means a Preferred HITS Certificate, a Treasury HITS Certificate or a Corporate HITS Certificate.

"*Holder*" means, with respect to a Trust Security, the Person in whose name the Trust Security evidenced by a Certificate is registered in the Security Register (and any such Person shall be deemed to be a beneficial owner within the meaning of the Delaware Statutory Trust Act); *provided*, *however*, that solely for the purpose of determining whether the Holders of the requisite number of HITS have voted on any matter (and not for any other purpose hereunder), if the HITS remains in the form of one or more Book-Entry HITS Certificates and if the Clearing Agency (or its nominee) that is the registered holder of such Book-Entry HITS Certificate has sent an omnibus proxy assigning voting rights to the Clearing Agency Participants to whose accounts the HITS are credited on the record date, the term "Holder" shall mean such Clearing Agency Participant acting at the direction of the Owners.

"*Indemnified Person*" has the meaning specified in Section 8.6(c).

"*Indenture*" means the Base Indenture and the Fourteenth Supplemental Indenture, taken together.

"*Investment Company Act*" means the Investment Company Act of 1940, or any successor statute thereto, in each case as amended from time to time.

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

"*Lien*" means any lien, pledge, charge, encumbrance, mortgage, deed of trust, adverse ownership interest, hypothecation, assignment, security interest or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever.

"*Like Amount*" means:

(a) with respect to a distribution of Notes to Holders of Preferred HITS, Corporate HITS or Common Securities in connection with a dissolution or liquidation of the Trust or a redemption in kind of Corporate HITS pursuant to Section 4.2(c), Notes having a principal amount equal to the Liquidation Amount of the Trust Securities of the Holder to whom such Notes are distributed;

(b) with respect to a distribution of Pledged Treasury Securities to Holders of Treasury HITS in connection with a dissolution or liquidation of the Trust, Pledged Treasury Securities having a principal amount equal to the Liquidation Amount of the Treasury HITS to whom such Pledged Treasury Securities are distributed;

(c) with respect to a distribution of Preferred Stock or fractional interests in Preferred Stock to Holders of Trust Securities in connection with a dissolution or liquidation of the Trust, Preferred Stock or a fractional interest in a share of Preferred Stock (which may be effected by the Trust through the creation of depositary shares) having a liquidation preference equal to the Liquidation Amount of the Trust Securities of the Holder to whom such shares of Preferred Stock or a fractional interest in a share of Preferred Stock (including through a depositary share) are distributed;

(d) with respect to a redemption of Preferred Stock, 1/100th of a share of Preferred Stock for each Preferred HITS or Common Security;

(e) with respect to an Exchange of Preferred HITS and Qualifying Treasury Securities for Treasury HITS and Corporate HITS pursuant to Section 5.13(b), a number of Treasury HITS and a number of Corporate HITS in each case equal to the number of Preferred HITS included in such Exchange (e.g., if 1,000 Preferred HITS are being Exchanged, the Holder will receive 1,000 Treasury HITS and 1,000 Corporate HITS in accordance with and subject to Section 5.13);

(f) with respect to an Exchange of Treasury HITS and Corporate HITS for Preferred HITS and Qualifying Treasury Securities, a number of Preferred HITS equal to the number of Treasury HITS and the number of Corporate HITS being Exchanged (e.g., if 1,000 Treasury HITS and 1,000 Corporate HITS are being Exchanged, the Holder will receive upon the Exchange 1,000 Preferred HITS together with $1,000,000 principal amount of Qualifying Treasury Securities released from the Pledge, in accordance with and subject to Section 5.13(e));

(g) with respect to Notes (including Pledged Notes as applicable) being deposited or delivered in connection with an Exchange, Notes having a principal amount equal to $1,000 for each Preferred HITS involved in the Exchange;

(h) with respect to Section 5.16(c), $1,000 principal amount of Notes for each $1,000 Liquidation Amount of HITS of each Affected Class; and

(i) with respect to Section 5.16(d), 1/100th of a Stock Purchase Contract with its stated amount of $100,000 for each $1,000 Liquidation Amount of HITS of the Affected Classes.

"*Liquidation Amount*" means the stated amount of $1,000 per Trust Security.

"*Liquidation Date*" means the date of the distribution of the assets of the Trust to Holders pursuant to Section 9.4.

"*Liquidation Distribution*" has the meaning specified in Section 9.4(d).

"*Majority in Liquidation Amount*" means as to a Class or Classes of Trust Securities, except as provided by the Trust Indenture Act, Trust Securities of such Class or Classes representing more than 50% of the aggregate Liquidation Amount of all Outstanding Trust Securities of such Class or Classes.

"*Note Event of Default*" has the meaning specified in Section 2.10 of the Fourteenth Supplemental Indenture.

"*Note Purchase Agreement*" means the Note Purchase Agreement dated as of February 12, 2007 for the purchase of the Notes by the Trust, executed and delivered by the Corporation and a Regular Trustee on behalf of the Trust.

"*Note Redemption Date*" means, with respect to any Notes to be redeemed under the Indenture, the date fixed for redemption of such Notes under the Indenture.

"*Note Redemption Price*" means, with respect to any Notes to be redeemed under the Indenture, the Redemption Price for such redemption and related Note Redemption Date determined in accordance with the Indenture.

"*Note Trustee*" means The Bank of New York Trust Company, N.A., as successor trustee to The Bank of New York, solely in its capacity as trustee pursuant to the Indenture and not in its individual capacity, or its successor in interest in such capacity, or any successor trustee appointed as provided in the Indenture.

"*Notes*" means the $850,100,000 initial aggregate principal amount of the Corporation's Remarketable Fixed Rate Junior Subordinated Notes due 2043 issued pursuant to the Indenture.

"*Notice of Contingent Disposition Election*" has the meaning specified in Section 5.14(f).

"*Notice of Contingent Exchange Election*" has the meaning specified in Section 5.14(d)(i).

"*Officers' Certificate*" means, with respect to any Person, a certificate signed by any 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 by each officer signing the Officers' Certificate that such officer 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 such officer in rendering the Officers' Certificate;

(c) a statement that 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 such officer, such condition or covenant has been complied with.

"*Opinion of Counsel*" means a written opinion of counsel, who may be counsel for or an employee of the Corporation or any Affiliate of the Corporation.

"*Original Declaration*" has the meaning specified in the recitals to this Declaration.

"*Outstanding*," when used with respect to Trust Securities of a Class, means, as of the date of determination, all Trust Securities of such Class theretofore executed and delivered under this Declaration, except:

(a) Trust Securities of such Class theretofore canceled by the Property Trustee or delivered to the Property Trustee for cancellation;

(b) Trust Securities of such Class for whose payment or redemption money in the necessary amount has been theretofore deposited with the Property Trustee or any Paying Agent; *provided* that if such Trust Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Declaration; and

(c) Trust Securities of such Class that have been paid or in exchange for or in lieu of which other Trust Securities have been executed and delivered pursuant to Sections 5.4, 5.5, 5.11 and 5.13;

provided, however, that in determining whether the Holders of the requisite Liquidation Amount of the Outstanding HITS of a Class have given any request, demand, authorization, direction, notice, consent or waiver hereunder, HITS of such Class owned by the Corporation, any Trustee, or any Affiliate of the Corporation or any Trustee shall be disregarded and deemed not to be Outstanding, except that (a) in determining whether any Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only HITS of such Class that such Trustee actually knows to be so owned shall be so disregarded, and (b) the foregoing shall not apply at any time when all of the Outstanding HITS of such Class are owned by the Corporation, one or more of the Trustees, and/or any such Affiliate. HITS of a Class so owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Regular Trustees the pledgee's right so to act with respect to such HITS and that the pledgee is not the Corporation or any Affiliate of the Corporation.

"*Owner*" means each Person who is the beneficial owner of Book-Entry HITS as reflected in the records of the Clearing Agency or, if a Clearing Agency Participant is not the Owner, then as reflected in the records of a Person maintaining an account with such Clearing Agency (directly or indirectly, in accordance with the rules of such Clearing Agency).

"*Paying Agent*" means any paying agent or co-paying agent appointed pursuant to Section 5.9 and shall initially be The Bank of New York Trust Company, N.A.

"*Payment Account*" means a segregated non-interest-bearing corporate trust account maintained by the Property Trustee initially with The Bank of New York Trust Company, N.A. (in its corporate capacity and not as Paying Agent), in its trust department for the benefit of the Holders in which all amounts paid in respect of the Notes, the Stock Purchase Contracts and the Preferred Stock will be held and from which the Property Trustee, through the Paying Agent, shall make payments to the Holders in accordance with Sections 4.1 and 4.2. After the Stock Purchase Date, the Payment Account may at any time be established with any commercial bank by the Property Trustee.

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

"*Pledge*" means the pledge under the Collateral Agreement of Notes or Qualifying Treasury Securities, as the case may be.

"*Pledged Notes*" has the meaning specified in the Collateral Agreement.

"*Pledged Treasury Securities*" has the meaning specified in the Collateral Agreement.

"*Predecessor Corporate HITS Certificate*" of any particular Corporate HITS Certificate means every previous Corporate HITS Certificate evidencing all or a portion of the rights and obligations of the Corporation and the Holder under the Corporate HITS evidenced thereby; and, for the purposes of this definition, any Corporate HITS Certificate delivered under Section 5.5 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Corporate HITS Certificate shall be deemed to evidence the same rights and obligations of the Corporation and the Holder as the mutilated, destroyed, lost or stolen Corporate HITS Certificate.

"*Predecessor Certificate*" means a Predecessor Preferred HITS Certificate, a Predecessor Treasury HITS Certificate or a Predecessor Corporate HITS Certificate, as applicable.

"*Predecessor Preferred HITS Certificate*" of any particular Preferred HITS Certificate means every previous Preferred HITS Certificate evidencing all or a portion of the rights and obligations of the Corporation and the Holder under the Preferred HITS evidenced thereby; and, for the purposes of this definition, any Preferred HITS Certificate delivered under Section 5.5 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Preferred HITS Certificate shall be deemed to evidence the same rights and obligations of the Corporation and the Holder as the mutilated, destroyed, lost or stolen Preferred HITS Certificate.

"*Predecessor Treasury HITS Certificate*" of any particular Treasury HITS Certificate means every previous Treasury HITS Certificate evidencing all or a portion of the rights and obligations of the Corporation and the Holder under the Treasury HITS evidenced thereby; and, for the purposes of this definition, any Treasury HITS Certificate delivered under Section 5.5 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Treasury HITS Certificate shall be deemed to evidence the same rights and obligations of the Corporation and the Holder as the mutilated, destroyed, lost or stolen Treasury HITS Certificate.

"*Preferred HITS*" means a beneficial interest in the Trust, having a Liquidation Amount of $1,000 and having the rights provided for Preferred HITS in this Declaration, including the right to receive Distributions and a Liquidation Distribution as provided herein.

"*Preferred HITS Certificate*" means a certificate evidencing ownership of Preferred HITS, substantially in the form attached as Exhibit D.

"*Preferred HITS Distribution Rate*" means (i) from the Closing Date to but not including the later of March 15, 2012 and the Stock Purchase Date (and for each related Distribution Period), 5.63% per annum (calculated on an $^{30}/_{360}$ Basis) on a cumulative basis for each Regular Distribution Date to and including the Stock Purchase Date; and (ii) thereafter, for each Distribution Period and related Regular Distribution Date, the greater of (A) Three-Month LIBOR for such Distribution Period plus 0.40% and (B) 4.00% (calculated on an Actual/360 Basis) on a non-cumulative basis.[1]

"*Preferred HITS Redemption Date*" means, with respect to any Preferred HITS to be redeemed, the date fixed for such redemption by or pursuant to this Declaration; *provided* that each Preferred Stock Redemption Date shall be a Redemption Date for a like amount of Preferred HITS.

[1] Clause (i) is the sum of the per annum interest rate on the Notes and the per annum Contract Payments rate; clause (ii) is the per annum dividend rate on the Preferred Stock.

"*Preferred HITS Redemption Price*" means, with respect to any Preferred HITS and Common Securities and the related Preferred HITS Redemption Date, the liquidation amount for a Like Amount of Preferred Stock redeemed in accordance with the Certificate of Designations plus accumulated and unpaid distributions to but excluding the Redemption Date.

"*Preferred Stock*" means the Adjustable Rate Non-Cumulative Preferred Stock, Series G, $100,000 liquidation preference per share, no par value, of the Sponsor.

"*Preferred Stock Default*" means the failure of the Corporation to comply in any material respect with any of its obligations (i) under the Stock Purchase Contract Agreement or (ii) as issuer of the Preferred Stock, including in the Certificate of Designations, the Corporation's certificate of incorporation, or arising under applicable law.

"*Preferred Stock Redemption Date*" means, with respect to any shares of Preferred Stock to be redeemed under the Certificate of Designations, the date fixed for redemption of such shares under the Certificate of Designations.

"*Proceeds*" has the meaning specified in the Collateral Agreement.

"*Property Trustee*" means the Person identified as the "Property Trustee" in the preamble to this Declaration, solely in its capacity as Property Trustee of the Trust and not in its individual capacity, or its successor in interest in such capacity, or any successor property trustee appointed as herein provided.

"*Prospectus*" means the prospectus supplement, dated February 12, 2007, to the prospectus dated May 5, 2006, of the Corporation and the Trust relating to the offering of the Preferred HITS.

"*Qualifying Treasury Securities*" has the meaning specified in Section 10.1.

"*Recombination Notice and Request*" has the meaning specified in Section 5.13(d)(ii).

"*Redemption Date*" means a Preferred HITS Redemption Date or a Corporate HITS Redemption Date, as applicable.

"*Redemption Price*" means, (i) with respect to a redemption of Preferred HITS, the Preferred HITS Redemption Price, and (ii) with respect to a redemption of Corporate HITS, the Corporate HITS Redemption Price.

"*Regular Distribution Date*" means:

(a) each March 15 and September 15 occurring prior to and including the later of March 15, 2012 and the Stock Purchase Date, commencing on September 15, 2007 (or, in the case of Treasury HITS, the first such date on which Treasury HITS are outstanding);

(b) after the later of March 15, 2012 and the Stock Purchase Date, each March 15, June 15, September 15 and December 15; and

(b) the Stock Purchase Date if not otherwise a Regular Distribution Date;

provided, *however*, that the last Regular Distribution Date for the Treasury HITS shall be the Stock Purchase Date (except to the extent subordinated notes relating to deferred interest are outstanding); and *provided that* if any Regular Distribution Date is not a Business Day, the Regular Distribution Date shall be the next Business Day.

"*Regular Trustee*" means each of the individuals identified as a "Regular Trustee" in the preamble to this Declaration solely in such individual's capacity as Regular Trustee of the Trust and not in such individual's individual capacity, or such Regular Trustee's successor in interest in such capacity, or any successor trustee appointed as herein provided.

"*Relevant Trustee*" shall have the meaning specified in Section 8.10.

"*Remarketing*" has the meaning specified in the Fourteenth Supplemental Indenture.

"*Remarketing Agent*" means, as to a Remarketing and Remarketing Agreement, the remarketing agent and any successor or replacement remarketing agent appointed by the Corporation.

"*Remarketing Agent's Fee*" means, as to the Remarketing Agent and a Remarketing, the fee provided for in the Remarketing Agreement.

"*Remarketing Agreement*" means the Remarketing Agreement to be entered into prior to the first Remarketing among the Corporation, the Trust (acting through the Property Trustee) and the Remarketing Agent, as amended or supplemented from time to time.

"*Remarketing Period*" has the meaning specified in the Fourteenth Supplemental Indenture.

"*Remarketing Settlement Date*" has the meaning specified in the Fourteenth Supplemental Indenture.

"*Reset Rate*" has the meaning specified in the Fourteenth Supplemental Indenture (and is the interest rate applicable to the Notes and the Corporate HITS Distribution Rate commencing on the Remarketing Settlement Date).

"*Responsible Officer*" means, with respect to any Trustee other than a Regular Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs 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 such person's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Declaration.

"*Securities Act*" means the Securities Act of 1933, and any successor statute thereto, in each case as amended from time to time.

"*Securities Intermediary*" means The Bank of New York Trust Company, N.A., as Securities Intermediary under the Collateral Agreement until a successor Securities Intermediary shall have become such pursuant to the applicable provisions of the Collateral Agreement, and thereafter "Securities Intermediary" shall mean such successor or any subsequent successor who is appointed pursuant to the Collateral Agreement.

"*Securities Register*" has the meaning specified in Section 5.4.

"*Securities Registrar*" means the transfer agent and registrar designated by the Regular Trustees for the Trust Securities pursuant to Section 5.4.

"*Special Event*" means a Tax Event, Capital Treatment Event or an Investment Company Event.

"*Splitting Notice and Request*" has the meaning specified in Section 5.13(b)(iii).

"*Sponsor*" has the meaning specified in the preamble to this Declaration.

"*Stock Purchase Contract*" has the meaning specified in the Stock Purchase Contract Agreement.

"*Stock Purchase Contract Agreement*" means the Stock Purchase Contract Agreement, dated as of the date hereof, between the Corporation and the Property Trustee (acting on behalf of the Trust).

"*Stock Purchase Date*" has the meaning specified in the Stock Purchase Contract Agreement.

"*Subscription Agreement*" means the Subscription Agreement dated as of February 12, 2007 for the purchase of Common Securities by the Corporation, executed and delivered by the Corporation and a Regular Trustee on behalf of the Trust.

"*Successful*" has the meaning specified in the Fourteenth Supplemental Indenture.

"*Successor Securities*" has the meaning specified in Section 9.5.

"*Tax Event*" means the Trust or the Corporation has requested and received an opinion of counsel (which may be the Corporation's counsel or counsel of an Affiliate but not an employee and which must be reasonably acceptable to the Property Trustee) experienced in tax matters to the effect that, as a result of any (i) amendment to or change in the laws or regulations of the United States or any political subdivision or taxing authority of or in the United States that is enacted or becomes effective after the initial issuance of the HITS; (ii) proposed change in those laws or regulations that is announced after the initial issuance of the HITS; or (iii) official administrative decision or judicial decision or administrative action or other administrative pronouncement interpreting or applying those laws or regulations, including revocation of an existing pronouncement, that is announced or communicated to the Corporation or the Trust in respect of the HITS after the initial issuance of the HITS, there is more than an insubstantial risk that: (a) the Trust is, or will be, subject to United States federal income tax with respect to income received or accrued on any assets held by the Trust; (b) interest payable by the Corporation on the Notes is not, or will not be, deductible by the Corporation, in whole or in part, for United States federal income tax purposes; or (c) the Trust is, or will be, subject to more than a de minimis amount of other taxes, duties or other governmental charges.

"*30/360 Basis*" means, for purposes of calculation a rate for Distributions, such rate calculated on the basis of a 360-day year consisting of twelve 30-day months.

"*Three-Month LIBOR*" means, for any Distribution Period, "Three-Month LIBOR" for the corresponding Dividend Period as defined in and determined pursuant to the Certificate of Designations.

"*Time of Delivery*" means February 16, 2007.

"*Transaction Agreements*" means each of the Collateral Agreement, the Guarantee Agreements, the Base Indenture, the Fourteenth Supplemental Indenture, the Notes, the Remarketing Agreement, the Stock Purchase Contract Agreement, the Underwriting Agreement, the Note Purchase Agreement, the

Replacement Capital Covenant, dated as of the date hereof, by the Corporation in favor of and for the benefit of each Covered Debtholder (as defined therein), and any other agreement determined by a Trustee to be appropriate in exercising the authority, express or implied, otherwise granted to the Trustees under this Declaration.

"*Treasury HITS*" means a beneficial interest in the Trust, having a Liquidation Amount of $1,000 and having the rights provided for Treasury HITS in this Declaration, including the right to receive Distributions and a Liquidation Distribution as provided herein.

"*Treasury HITS Certificate*" means a certificate evidencing ownership of Treasury HITS, substantially in the form attached as Exhibit E.

"*Treasury HITS Distribution Rate*" means 0.15% per annum accruing for each Treasury HITS from the Regular Distribution Date immediately preceding its issuance, on a cumulative basis.

"*Treasury HITS Treasury Roll Over Amount*" means, for each Additional Distribution Date on which Treasury HITS are Outstanding, an amount per $1,000 of Treasury HITS equal to the excess (if any) of $1,000 (which is the principal amount of Pledged Treasury Securities per Treasury HITS maturing at least one but not more than six Business Days prior to such date) over the amount required to be expended by the Collateral Agent to purchase Qualifying Treasury Securities maturing at least one Business Day prior to that Additional Distribution Date.

"*Trust*" means the Delaware statutory trust known as "BAC Capital Trust XIV", which was created under the Delaware Statutory Trust Act pursuant to the Original Declaration and the filing of the Certificate of Trust, and continued pursuant to this Declaration.

"*Trustees*" means, collectively, the Property Trustee, the Delaware Trustee, and the Regular Trustees.

"*Trust Indenture Act*" means the Trust Indenture Act of 1939 as in force at the date as of which this instrument was executed;*provided*, *however*, that in the event the Trust Indenture Act of 1939 is amended after such date, "*Trust Indenture Act*" means, to the extent required by any such amendment, the Trust Indenture Act of 1939, as so amended.

"*Trust Property*" means (a) the Notes for so long as they are owned by the Trust in accordance with this Declaration, (b) the Stock Purchase Contracts, (c) the Preferred Stock once acquired by the Trust pursuant to the Stock Purchase Contracts, (d) treasury securities (that are required to be Qualifying Treasury Securities when delivered) delivered to the Property Trustee (or the Collateral Agent) pursuant to Section 5.13 or Section 5.14, (e) the rights of the Trust under the Transaction Agreements, and (f) all proceeds and rights in respect of the foregoing and any other property and assets for the time being held or deemed to be held by the Property Trustee pursuant to the Declaration.

"*Trust Security*" means any one of the Common Securities or any of the three Classes of the HITS.

"*Trust Securities Certificate*" means any one of the Common Securities Certificates or the HITS Certificates.

"*Underwriting Agreement*" means the Underwriting Agreement, dated February 12, 2007, among the Trust, the Corporation and the underwriters named therein.

"*United States Person*" means, for U.S. federal income tax purposes, a citizen or resident of the United States, a domestic partnership, a domestic corporation, an estate the income of which is subject to U.S. federal income taxation regardless of its source, and a trust if (i) a court within the United States is able to exercise primary supervision over the administration of the trust, and (ii) one or more United States persons have the authority to control all substantial decisions of the trust.

ARTICLE II

CONTINUATION OF THE TRUST; ISSUANCE OF HITS; AND RELATED MATTERS

Section 2.1 *Name.*

The trust continued hereby shall be known as "BAC Capital Trust XIV," as such name may be modified from time to time by the Regular Trustees following written notice to the Holders and the other Trustees, in which name the Regular Trustees and the other Trustees may conduct the business of the Trust, make and execute contracts and other instruments on behalf of the Trust and sue and be sued on behalf of the Trust.

Section 2.2 *Office of the Delaware Trustee; Principal Place of Business.*

The address of the Delaware Trustee in the State of Delaware is The Bank of New York (Delaware), 100 White Clay Center, Route 273, Newark, Delaware 19711, or such other address in the State of Delaware as the Delaware Trustee may designate by written notice to the Sponsor, the Property Trustee and the Regular Trustees. The principal executive office of the Trust is c/o Bank of America Corporation, NC1-007-07-06, 100 North Tryon Street, Charlotte, North Carolina, 28255, Attention: Corporate Treasury—Securities Administration.

Section 2.3 *Initial Contribution of Trust Property; Organizational Expenses.*

The Trustees acknowledge receipt from the Sponsor in connection with the Original Declaration of the sum of $10, which constituted the initial Trust Property. The Sponsor shall pay organizational expenses of the Trust as they arise or shall, upon request of any Trustee, promptly reimburse such Trustee for any such expenses paid by such Trustee. The Sponsor shall not make any claim upon the Trust Property for the payment of such expenses.

Section 2.4 *Issuance of the HITS.*

(a) On February 12, 2007, the Regular Trustees, on behalf of the Trust, and the Sponsor executed and delivered the Underwriting Agreement, which action is hereby authorized, approved, ratified and confirmed in all respects. Contemporaneously with the execution and delivery of this Declaration, a Regular Trustee, on behalf of the Trust, in connection with the execution and delivery on such date of 850,000 Preferred HITS to the underwriters named in the Underwriting Agreement, shall execute in accordance with Section 5.3 and deliver to the Clearing Agency a Preferred HITS Certificate or Certificates that are Book-Entry HITS Certificates, registered in the name of the Clearing Agency (or its nominee) representing 850,000 Preferred HITS, against payment of $1,000 per Preferred HITS or $850,000,000 in the aggregate, net of the applicable underwriting discount determined in accordance with the Underwriting Agreement, as the purchase price therefor in immediately available funds, which funds such Regular Trustee shall promptly deliver to the Property Trustee or its designee. On any one or more dates after the execution and delivery of this Declaration additional Preferred HITS Certificates or

Certificates that are Book-Entry HITS Certificates representing Preferred HITS may be issued in accordance with this Section 2.4(a), executed in accordance with Section 5.3 and delivered to the Clearing Agency, registered in the name of the nominee of the Clearing Agency (or its nominee), against payment of $1,000 per Preferred HITS plus accumulated Distributions, net of the applicable underwriting discount determined in accordance with the terms of an underwriting agreement to be entered into by the Regular Trustees, on behalf of the Trust, the Sponsor and the underwriters named therein, as the purchase price therefore in immediately available funds, which funds such Regular Trustee shall promptly deliver to the Property trustee or its designee; *provided, however*, that the total Liquidation Amount of additional Preferred HITS to be so issued may not exceed $450,000,000. Such additional Preferred HITS may be issued at a different offering price and accrue distributions from a different date than the Preferred HITS being issued hereby.

(b) On the date on which a Regular Trustee, on behalf of the Trust executes and delivers a Preferred HITS Certificate pursuant to Section 2.4(a), such Regular Trustee shall also execute in accordance with Section 5.3 and deliver to the Clearing Agency or the Certificate Custodian two additional Book-Entry HITS Certificates, one of which shall be a Corporate HITS Certificate and the other of which shall be a Treasury HITS Certificate, each representing up to a maximum number of Corporate HITS or Treasury HITS, as applicable, that is the same as the number of Preferred HITS evidenced by the Certificate contemporaneously issued as a Book-Entry HITS Certificate pursuant to Section 2.4(a). In connection with any subsequent issuance of Preferred HITS as set forth in the third sentence of Section 2.4(a), a Regular Trustee, on behalf of the Trust, contemporaneously with any such additional issuance, shall execute in accordance with Section 5.3 and deliver to the Clearing Agency or the Certificate Custodian two additional Book-Entry Certificates, one of which shall be a Corporate HITS Certificate and the other of which shall be a Treasury HITS Certificate, each representing up to a maximum number of Corporate HITS or Treasury HITS, as applicable that is the same as the number of Preferred HITS as evidenced by the Certificate contemporaneously issued as a Book-Entry HITS Certificate pursuant to Section 2.4(a) in connection with such subsequent issuance.

(c) In order to give effect to Exchanges, the Securities Registrar may, as provided in Section 5.11, endorse Book-Entry HITS Certificates to reduce or increase the number of Preferred HITS, Treasury HITS or Corporate HITS evidenced by each such Book-Entry HITS Certificate, *provided* that no such endorsement shall result in a Book-Entry HITS Certificate evidencing a number of Preferred HITS, Treasury HITS or Corporate HITS exceeding the maximum number set forth on the face of such Certificate.

Section 2.5 *Issuance of the Common Securities; Subscription and Purchase of Notes.*

Contemporaneously with the execution and delivery of this Declaration, a Regular Trustee, on behalf of the Trust, shall execute in accordance with Section 5.3 and deliver to the Sponsor a Common Securities Certificate, registered in the name of the Sponsor, evidencing 100 Common Securities, each having a Liquidation Amount of $1,000 and having an aggregate Liquidation Amount of $100,000, against payment by the Sponsor of the purchase price therefor in immediately available funds, which amount such Regular Trustee shall promptly deliver to the Property Trustee or its designee. Contemporaneously therewith, a Regular Trustee, on behalf of the Trust, shall (x) subscribe to and purchase from the Corporation the Notes registered in the name of the Property Trustee on behalf of the Trust and having an aggregate initial principal amount equal to $850,100,000, (y) shall deliver to the Corporation the purchase price therefor (being the sum of the amounts delivered to the Property Trustee or its designee pursuant to (i) the second sentence of Section 2.4 and (ii) the first sentence of this Section 2.5), and (z) shall instruct the Corporation to deliver the Notes to the Collateral Agent for deposit in the Collateral Account. In connection with any subsequent issuance of Preferred HITS as set forth in

the third sentence of Section 2.4(a), a Regular Trustee, on behalf of the Trust, contemporaneously with any such additional issuance, shall subscribe to and purchase from the Corporation Notes, registered in the name of the Property Trustee and having an aggregate principal amount equal to the aggregate Liquidation Amount of the additional Preferred HITS being issued by the Trust pursuant to the third sentence of Section 2.4(a) against payment of a purchase price equal to the aggregate purchase price of the Preferred HITS being so issued.

Section 2.6 *Declaration.*

The exclusive purposes and functions of the Trust are and the Trust shall have the power and authority (a) to issue and sell Trust Securities, (b) to use the gross proceeds from such sale to invest in and purchase the Notes, (c) to enter into and perform its obligations under the Transaction Agreements (including, on the Stock Purchase Date, to purchase Preferred Stock pursuant to the Stock Purchase Contracts), (d) to hold the Notes and certain U.S. Treasury securities and the Bank of America Deposit and pledge them to secure the Trust's obligations under the Stock Purchase Contracts, and (e) to engage in those activities necessary or incidental thereto. The Sponsor hereby appoints the Trustees as trustees of the Trust, to have all the rights, powers and duties to the extent set forth herein, and the Trustees hereby accept such appointment. The Property Trustee hereby declares that it will hold the Trust Property upon and subject to the conditions set forth herein for the benefit of the Trust and the Holders. The Regular Trustees shall have all rights, powers and duties set forth herein and in accordance with applicable law with respect to accomplishing the purposes of the Trust. 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 Property Trustee or the Regular Trustees, or any of the duties and responsibilities of the Trustees generally, set forth herein. The Delaware Trustee shall be one of the trustees of the Trust for the sole and limited purpose of fulfilling the requirements of Section 3807(a) of the Delaware Statutory Trust Act and for taking such actions as are required to be taken by a Delaware trustee under the Delaware Statutory Trust Act. To the extent that, at law or in equity, the Delaware Trustee has duties (including fiduciary duties) and liabilities relating thereto to the Trust or the Holders, it is hereby understood and agreed that such duties and liabilities are replaced by the duties and liabilities of the Delaware Trustee expressly set forth in this Declaration. The Delaware Trustee shall be entitled to all of the same rights, protections, indemnities and immunities under this Declaration and with respect to the Trust as the Property Trustee.

Section 2.7 *Authorization to Enter into Certain Transactions.*

(a) The Trustees shall conduct the affairs of the Trust in accordance with the terms of this Declaration. Subject to the limitations set forth in Section 2.7(b), and in accordance with the following clauses (i) and (ii) of this Section 2.7(a), the Trustees shall have the authority to enter into all transactions and agreements determined by the Trustees to be appropriate in exercising the authority, express or implied, otherwise granted to the Trustees under this Declaration, and to perform all acts in furtherance thereof, including the following:

(i) As among the Trustees, the Regular Trustees, and each of them, shall have the power and authority to act on behalf of the Trust with respect to the following matters:

(A) execution of the Trust Securities on behalf of the Trust in accordance with this Declaration and the issuance and sale of the Trust Securities;

(B) causing the Trust to perform the Underwriting Agreement, the Note Purchase Agreement and the Subscription Agreement and causing the Trust to enter into, and to execute, deliver and perform each of the Underwriting Agreement, the Note Purchase Agreement and the Subscription Agreement and any other agreements as may be necessary or desirable in connection with the purposes and function of the Trust;

(C) assisting in the registration of the HITS under the Securities Act and under state securities or blue sky laws, and the qualification of this Declaration under the Trust Indenture Act;

(D) assisting in the listing of the HITS upon such securities exchange or exchanges, if any, as shall be determined by the Sponsor, with the registration of the HITS under the Exchange Act, if required, and with the preparation and filing of all periodic and other reports and other documents pursuant to the foregoing;

(E) assisting in the sending of notices (other than notices of default) and other information regarding the Trust Securities, the Notes and the Preferred Stock to the Holders in accordance with this Declaration;

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

(G) appointing a Paying Agent and a Securities Registrar and any successor Paying Agent or Securities Registrar in accordance with this Declaration to The Bank of New York Trust Company, N.A. as Paying Agent and as Securities Registrar;

(H) to the extent provided in this Declaration, the winding up of the affairs of and liquidation of the Trust and the execution and filing of the certificate of cancellation with the Secretary of State of the State of Delaware;

(I) execution and delivery of closing certificates, if any, pursuant to the Underwriting Agreement and any Remarketing Agreement and application for a taxpayer identification number for the Trust;

(J) unless otherwise required by the Delaware Statutory Trust Act, the Trust Indenture Act or other applicable law, execution on behalf of the Trust (either acting alone or together with any or all of the Regular Trustees) of any documents that the Regular Trustees have the power to execute pursuant to this Declaration;

(K) the taking of any action incidental to the foregoing as the Trustees may from time to time determine is necessary or advisable to give effect to the terms of this Declaration; and

(L) the taking of any action required to be taken by the Regular Trustees under any of the Transaction Agreements.

(ii) As among the Trustees, the Property Trustee shall have the power, duty and authority to act on behalf of the Trust with respect to the following matters:

(A) the establishment of the Payment Account;

(B) the execution and delivery on behalf of the Trust of the Stock Purchase Contract Agreement, the Collateral Agreement, the Remarketing Agreement, and any other Transaction Agreement other than the Underwriting Agreement and the performance by the Trust of its obligations and the exercise by the Trust of its rights thereunder;

(C) the receipt of the Notes and, in connection with an Exchange, Notice of Contingent Exchange Election or Remarketing, the receipt of Qualifying Treasury Securities;

(D) the pledge of Notes and Qualifying Treasury Securities pursuant to the Collateral Agreement;

(E) the receipt of the Preferred Stock on the Stock Purchase Date;

(F) the collection of interest, principal and any other payments or instruments (including due bills or promissory notes of the Corporation issuable under or with respect to the Notes) made in respect of the Notes and the holding of such amounts in the Payment Account;

(G) the collection of the Contract Payments and any other payments or instruments (including due bills or promissory notes of the Sponsor issuable under the Stock Purchase Contract Agreement or with respect to the Contract Payments) and the holding of such amounts in the Payment Account;

(H) the collection of payment of dividends, redemption price and other payments made in respect of the Preferred Stock and the holding of such amounts in the Payment Account;

(I) the distribution through the Paying Agent of amounts or property or instruments (including due bills or promissory notes of the Corporation issuable under or with respect to the Notes or the Stock Purchase Contracts) distributable to the Holders in respect of the Trust Securities;

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

(K) the exercise of all of the rights, powers and privileges of a holder of the Notes for so long as the Trust holds Notes, subject to Articles V and VI of this Declaration;

(L) the exercise of all of the rights, powers and privileges of a holder of Preferred Stock for so long as the Trust holds Preferred Stock, subject to Articles V and VI of this Declaration;

(M) the sending of notices of default and other information regarding the Trust Securities, the Notes, the Preferred Stock and the Transaction Agreements to the Holders in accordance with this Declaration;

(N) the distribution of the Trust Property in accordance with the terms of this Declaration;

(O) to the extent provided in this Declaration, the winding up of the affairs of and liquidation of the Trust and the preparation, execution and filing of the certificate of cancellation with the Secretary of State of the State of Delaware; and

(P) after an Event of Default (other than under paragraph (c), (d) or (e) of the definition of such term if such Event of Default is by or with respect to the Property Trustee), the taking of any action incidental to the foregoing as the Property Trustee may from time to time determine is necessary or advisable to give effect to the terms of this Declaration and to protect and conserve the Trust Property for the benefit of the Holders (without consideration of the effect of any such action on any particular Holder).

Except as otherwise provided in this Section 2.7(a)(ii), the Property Trustee shall have none of the duties, liabilities, powers or the authority of the Regular Trustees set forth in Section 2.7(a)(i).

(b) So long as this Declaration remains in effect, the Trust (or the Trustees acting on behalf of the Trust) shall not undertake any business, activities or transactions except as expressly provided herein or contemplated hereby. In particular, the Trustees (acting on behalf of the Trust) shall not (i) acquire any investments or engage in any activities not authorized by this Declaration, (ii) sell, assign, transfer, exchange, mortgage, pledge, set-off or otherwise dispose of any of the Trust Property or interests therein, including to Holders, except as expressly provided herein, (iii) take any action that would cause the Trust to become taxable as a corporation or classified as a partnership for U.S. federal income tax purposes, (iv) incur any indebtedness for borrowed money or issue any other debt, (v) take or consent to any action that would result in the placement of a Lien on any of the Trust Property, except as expressly provided herein, (vi) apply any of the Trust Property or its proceeds other than as provided herein, (vii) acquire any assets other than the Trust Property, (viii) possess any power or otherwise act in such a way as to vary the Trust Property, except as expressly provided herein, (ix) possess any power or otherwise act in such a way as to vary the terms of the Trust Securities in any way whatsoever (except to the extent expressly authorized in this Declaration or by the terms of the Trust Securities) or (x) issue any securities or other evidences of beneficial ownership of, or beneficial interest in, the Trust other than the Trust Securities. The Property Trustee shall defend all claims and demands of all Persons at any time claiming any Lien on any of the Trust Property adverse to the interest of the Trust or the Holders in their capacity as Holders (other than the Lien created by the Collateral Agreement, which is a permitted Lien).

(c) In connection with the issuance and sale of the Preferred HITS, the Sponsor shall have the right and, if the Sponsor shall desire that the actions be taken, the responsibility to assist the Trust with respect to, or effect on behalf of the Trust, the following (and any actions taken by the Sponsor in furtherance of the following prior to the date of this Declaration are hereby ratified and confirmed in all respects):

(i) the preparation and filing by the Trust with the Commission and the execution on behalf of the Trust of a registration statement on the appropriate form in relation to the HITS, including any amendments thereto;

(ii) the determination of the states in which to take appropriate action to qualify or register for sale all or part of the HITS and the determination of any and all such acts, other than actions that must be taken by or on behalf of the Trust, and the advice to the Trust of actions they must take on behalf of the Trust, and the preparation for execution and filing of any documents to be executed and filed by the Trust or on behalf of the Trust, as the Sponsor deems necessary or advisable in order to comply with the applicable laws of any such states;

(iii) the preparation for filing by the Trust and execution on behalf of the Trust of an application to the New York Stock Exchange or any other national stock exchange or the Nasdaq National Market or any other automated quotation system for listing upon notice of issuance of any HITS and filing with such exchange or self-regulatory organization such notification and documents as may be necessary from time to time to maintain such listing;

(iv) the negotiation of the terms of, and the execution and delivery of, the Underwriting Agreement providing for the sale of the Preferred HITS; and

(v) the taking of any other actions necessary or desirable to carry out any of the foregoing activities.

(d) Notwithstanding anything herein to the contrary, the Regular Trustees are authorized and directed to conduct the affairs of the Trust and to operate the Trust so that the Trust will not be deemed to be an "investment company" required to be registered under the Investment Company Act, and will not be taxable as a corporation or classified as a partnership for U.S. federal income tax purposes. In this connection, the Sponsor and the Regular Trustees are authorized to take any action, not inconsistent with applicable law, the Certificate of Trust or this Declaration, that they determine in their discretion to be necessary or desirable for such purposes, as long as such action does not adversely affect in any material respect the interests of the Holders of the Outstanding HITS. In no event shall the Sponsor or the Trustees be liable to the Trust or the Holders for any failure to comply with this Section that results from a change in law or regulation or in the interpretation thereof.

Section 2.8 *Assets of the Trust.*

The assets of the Trust shall consist solely of the Trust Property.

Section 2.9 *Title to Trust Property.*

Legal title to all Trust Property shall be vested at all times in the Property Trustee (in its capacity as such) and shall be held and administered by the Property Trustee in trust for the benefit of the Trust and the Holders in accordance with this Declaration, subject to the terms and provisions of the Collateral Agreement.

ARTICLE III

PAYMENT ACCOUNT

Section 3.1 *Payment Account.*

(a) On or prior to the Closing Date, the Property Trustee shall establish or cause to be established the Payment Account. The Property Trustee and its agents shall have exclusive control and sole right of withdrawal with respect to the Payment Account for the purpose of making deposits in and withdrawals from the Payment Account in accordance with this Declaration. All monies and other property deposited or held from time to time in the Payment Account shall be held by the Property Trustee in the Payment Account for the exclusive benefit of the Holders and for distribution as herein provided, including (and subject to) any priority of payments provided for herein.

(b) The Property Trustee shall deposit or cause to be deposited in the Payment Account, promptly upon receipt, (i) all payments of principal of or interest on, and any other payments or proceeds with respect to, the Notes, (ii) all Contract Payments, (iii) all Excess Proceeds Distributions, (iv) all

Treasury HITS Treasury Roll Over Amounts, (v) all payments of dividends or redemption price on, and other payments or proceeds with respect to, the Preferred Stock or the Stock Purchase Contracts and (vi) all other cash amounts received as payments on or with respect to the Trust Property. Amounts held in the Payment Account shall not be invested by the Property Trustee pending distribution thereof.

ARTICLE IV

DISTRIBUTIONS; REDEMPTION, ETC.

Section 4.1 *Distributions.*

(a) The Trust Securities represent beneficial interests in the Trust, and Distributions will be made on the Trust Securities of a Class on applicable Distribution Dates in amounts that correspond to amounts of interest, dividends or Contract Payments, as applicable (and (i) in the case of the Preferred HITS, Corporate HITS and Common Securities and Deferred Note Interest Amounts, and (ii) in the case of the Preferred HITS, Treasury HITS and Common Securities, Deferred Contract Payment Amounts) that are received by the Property Trustee or the Paying Agent on or in connection with each applicable Distribution Date on the Trust Property that is the Corresponding Assets for such Class, as provided in Sections 4.1(b), (c) and (d).

(b) In the case of the Preferred HITS and the Common Securities, subject to Section 4.1(e):

(i) Distributions will be payable in cash on each Regular Distribution Date;

(ii) the Distributions payable on each Regular Distribution Date for the related Distribution Period will be at a rate per annum applied to the Liquidation Amount per Preferred HITS and Common Security equal to the Preferred HITS Distribution Rate for such Distribution Period (with the consequence that the amount of the Distribution for each $1,000 of Preferred HITS or Common Securities payable on each Regular Distribution Date being equal to (x) the sum of the amount of interest payable on such Regular Distribution Date on a Like Amount of Notes (without giving effect to any change in the interest rate on the Notes in connection with a Remarketing) plus 1/100th of the Contract Payment payable on a Stock Purchase Contract having a stated amount of $100,000 for each Distribution Period ending on or before the Stock Purchase Date and (y) the amount of dividends payable on such Regular Distribution Date on a Like Amount of Preferred Stock for each Distribution Period thereafter; and

(iii) Distributions shall be cumulative for each Regular Distribution Date to and including the Stock Purchase Date (because the Corresponding Assets to such date include Notes or Pledged Securities in a Like Amount) and non-cumulative thereafter (because the Corresponding Assets thereafter are the Preferred Stock).

(c) In the case of Corporate HITS, subject to Section 4.1(e):

(i) Distributions will be payable in cash on each Corporate HITS Distribution Date;

(ii) the Distributions payable on each Corporate HITS Distribution Date for the related Distribution Period will be at a rate per annum applied to the Liquidation Amount per Corporate HITS equal to the Corporate HITS Distribution Rate for such Distribution Period, with the consequence that the amount of the Distribution for each $1,000 of Corporate HITS payable on each Corporate HITS Distribution Date is equal to the amount of interest payable on or accrued to (as applicable) such Distribution Date on a Like Amount of Notes; and

(iii) Distributions shall be cumulative.

(d) In the case of Treasury HITS, subject to Section 4.1(e)

(i) Distributions will be payable in cash on each Regular Distribution Date;

(ii) the Distributions payable on each Regular Distribution Date for the related Distribution Period will be at a rate per annum applied to the Liquidation Amount per Treasury HITS equal to 1/100th of the Contract Payment payable on a Stock Purchase Contract having a stated amount of $100,000 on such Treasury HITS Distribution Date (expressed as a percentage);

(iii) Distributions shall be cumulative; and

(iv) additionally, on each Additional Distribution Date on which Treasury HITS are Outstanding (or as promptly thereafter as the Collateral Agent and the Paying Agent determine to be practicable), the Property Trustee shall distribute or cause to be distributed through the Paying Agent an amount per $1,000 of Treasury HITS equal to, the Treasury HITS Treasury Roll-Over Amount for such Additional Distribution Date.

(e) Distributions on the Trust Securities of a Class shall be made by the Paying Agent from the Payment Account and shall be payable on each Distribution Date only to the extent that the Trust has funds then on hand and available in the Payment Account from the Corresponding Assets of such Class for the payment of such Distributions. The Trust will have amounts to make full Distributions on the relevant Classes of Trust Securities in accordance with Sections 4.1(b), (c) and (d) on an applicable Distribution Date only if the Corporation has not (i) defaulted in paying interest on the Notes or Contract Payments on the Stock Purchase Contracts or (ii) exercised its right to defer payment of interest on the Notes and Contract Payments on the Stock Purchase Contracts and, accordingly, there is no outstanding Deferred Note Interest Amount or Deferred Contract Payment Amount. Deferred Note Interest Amounts and Deferred Contract Payment Amounts will be paid to Holders of the relevant Classes of Trust Securities on a *pro rata* basis on the applicable Distribution Dates on which such amounts are received by the Trust (or as soon thereafter as the Property Trustee determines to be practicable).

(f) In the event the Property Trustee or the Paying Agent receives any other cash or non-cash payments or distributions with respect to Corresponding Assets for any Class of HITS (including promissory notes of the Corporation delivered pursuant to (i) Section 2.7(c) of the Stock Purchase Contract Agreement if there are any Deferred Contract Payment Amounts outstanding on the Stock Purchase Date or (ii) Section 2.7(f) of the Fourteenth Supplemental Indenture if there are any Deferred Note Interest Amounts outstanding on the Stock Purchase Date), the Property Trustee shall distribute or cause to be distributed through the Paying Agent such cash amounts to the Holders of the related Classes of HITS on a *pro rata* basis promptly after receipt and may, in its discretion, distribute non-cash amounts on a*pro rata* basis (or on a basis that is as close as possible to a *pro rata* basis as it determines to be reasonably practicable).

(g) Distributions in cash on the Trust Securities of a Class with respect to an applicable Distribution Date shall be payable to the Holders thereof as they appear on the Securities Register for the Trust Securities at the close of business on the relevant record date for such Distribution Date, which shall be the last day of the month immediately preceding the month in which the relevant Distribution Date falls. Distributions payable on any Trust Securities of a Class that are not punctually paid on an applicable Distribution Date will cease to be payable to the Person in whose name such Trust Securities are registered on the relevant record date, and such defaulted Distribution will instead be payable to the Person in whose name such Trust Securities are registered on the special record date or other specified date for determining Holders entitled to such defaulted Distributions.

Section 4.2 *Redemption.*

(a) Mandatory redemption of Preferred HITS upon redemption of Preferred Stock. On each Preferred Stock Redemption Date, the Trust will be required to redeem a Like Amount of Preferred HITS and Common Securities at the redemption price for the Preferred Stock (it being understood and agreed that, because (i) the Preferred Stock will not become Trust Property until the Stock Purchase Date, and (ii) on the Stock Purchase Date, subject to Section 4.8, each $1,000 Liquidation Amount of Treasury HITS will automatically become $1,000 Liquidation Amount of Preferred HITS (and if any subordinated notes have been issued in respect of any Deferred Note Interest Amounts such subordinated notes will be distributed to the holders of the Preferred HITS), unless there is a Note Redemption Date resulting from a Special Event, without any action by or on behalf of Holders being necessary, no redemption of Preferred HITS, Treasury HITS or Common Securities will occur prior to the Stock Purchase Date).

(b) Mandatory redemption of Corporate HITS. On the maturity of the Notes or each Note Redemption Date, the Trust will be required to redeem a Like Amount of Corporate HITS at the Note Redemption Price (it being understood and agreed that, because (i) the Notes by their terms, except in the case of a Special Event, are not redeemable prior to March 15, 2017, (ii) the Trust is required to redeem the Corporate HITS in kind after the Stock Purchase Date pursuant to Section 4.2(c) if there is a Successful Remarketing, and (iii) the Sponsor has the right to cause the Trust to redeem the Corporate HITS in kind after the Stock Purchase Date pursuant to Section 4.2 if there is a Failed Remarketing or if the Stock Purchase Contracts terminate, a redemption of Corporate HITS other than in kind pursuant to such Section 4.2(c) will only occur after March 15, 2017 and only if there is a Failed Remarketing and the Sponsor does not exercise its right to cause the Trust to redeem the Corporate HITS in kind).

(c) Redemption in connection with a Remarketing. If a Successful Remarketing occurs, then promptly after the Remarketing Settlement Date the Trust shall redeem the Corporate HITS, in whole but not in part, in kind by exchanging for each Corporate HITS a Like Amount of Notes. If a Failed Remarketing occurs but on the Stock Purchase Date there is no Deferred Note Interest Amount outstanding, then promptly after the Stock Purchase Date the Trust shall redeem the Corporate HITS, in whole but not in part, in kind by exchanging for each Corporate HITS a Like Amount of Notes. If a Failed Remarketing occurs and there is a Deferred Note Interest Amount outstanding on the Stock Purchase Date, or if the Stock Purchase Contracts terminate in accordance with the terms of the Stock Purchase Contract Agreement prior to a Stock Purchase Date occurring, then the Sponsor may instruct the Trust at any time thereafter when no Deferred Note Interest Amount is outstanding to redeem the Corporate HITS, in whole but not in part, in kind by exchanging for each Corporate HITS a Like Amount of Notes. Any such redemption will be effected by Book-Entry Transfer of Notes in global form if the Notes then settle and clear through the Clearing Agency, and if the Notes do not then settle and clear through the Clearing Agency by delivery of definitive certificates evidencing the Notes to the Holders of Corporate HITS.

(d) Redemption in Connection with a Special Event. At any time within 90 days after a Tax Event, Capital Treatment Event or an Investment Company Event, the Corporation shall have the right to redeem, in whole but not in part, the Notes at the Note Redemption Price and all HITS will be redeemed pro rata based upon their respective Corresponding Assets.

(e) Notice of redemption. Notice of redemption shall be given by the Property Trustee by first-class mail, postage prepaid, mailed not less than 15 nor more than 60 days prior to the Redemption Date to each Holder of Trust Securities to be redeemed, at such Holder's address appearing in the Security Register. All notices of redemption shall state:

(i) the Redemption Date;

(ii) unless the redemption is a redemption of Corporate HITS in kind pursuant to Section 4.2(c), the Redemption Price or if the Redemption Price cannot be calculated prior to the time the notice is required to be sent, the estimate of the Redemption Price together with a statement that it is an estimate and that the actual Redemption Price will be calculated on the third Business Day prior to the Redemption Date (and if an estimate is provided, a further notice shall be sent of the actual Redemption Price on the date that such Redemption Price is calculated);

(iii) the CUSIP number or CUSIP numbers of the HITS affected;

(iv) if less than all the Outstanding Trust Securities are to be redeemed, the identification and the aggregate Liquidation Amount of the particular Trust Securities of the relevant Class to be redeemed;

(v) that on the Redemption Date the Redemption Price will become due and payable upon each such Trust Security to be redeemed and that Distributions thereon will cease to accumulate on and after said date, except as provided in Section 4.2(f)(ii) below; and

(vi) if the HITS Certificates are not Book-Entry HITS Certificates on the Redemption Date, the place or places where the HITS Certificates are to be surrendered for the payment of the Redemption Price.

(f) Redemption Price. In the case of a redemption of Preferred HITS and Common Securities pursuant to Section 4.2(a) or Corporate HITS pursuant to Section 4.2(b), in each case for payment of a cash Redemption Price:

(i) The Trust Securities redeemed on each Redemption Date shall be redeemed at the Redemption Price with the proceeds from the contemporaneous redemption of a Like Amount of Preferred Stock or Notes, as applicable. Redemptions of the Trust Securities shall be made and the Redemption Price shall be payable on each Redemption Date only to the extent that the Trust has funds then on hand and available in the Payment Account from the Corporation's redemption of Preferred Stock or Notes, as applicable, for the payment of such Redemption Price.

(ii) If the Property Trustee gives a notice of redemption in respect of any HITS, then, by 12:00 noon, New York City time, on the Redemption Date, subject to Section 4.2(c), the Property Trustee will, with respect to Book-Entry HITS, irrevocably deposit with the Clearing Agency for such Book-Entry HITS, to the extent available therefor, funds sufficient to pay the applicable Redemption Price and will give such Clearing Agency irrevocable instructions and authority to pay the Redemption Price to the Holders of the HITS. With respect to HITS that are not Book-Entry HITS, the Property Trustee, subject to Section 4.2(f)(i), will irrevocably deposit with the Paying Agent, to the extent available therefor, funds sufficient to pay the applicable Redemption Price and will give the Paying Agent irrevocable instructions and authority to pay the Redemption Price to the Holders of the HITS upon surrender of their HITS Certificates. Notwithstanding the foregoing, Distributions payable on or prior to the Redemption Date for any Trust Securities called for redemption shall be payable to the Holders of such Trust Securities as they appear on the Securities Register for the Trust Securities on the relevant record dates for the related Distribution Dates. If notice of redemption shall have been given and funds deposited as required, then upon the date of such deposit, all rights of Holders holding Trust Securities so

called for redemption will cease, except the right of such Holders to receive the Redemption Price and any Distribution payable in respect of the Trust Securities on or prior to the Redemption Date, but without interest, and such Trust Securities will cease to be outstanding. In the event that payment of the Redemption Price in respect of any Trust Securities called for redemption is improperly withheld or refused and not paid either by the Trust or by the Sponsor pursuant to the Guarantee Agreements, Distributions on such Trust Securities will continue to accumulate, as set forth in Section 4.1, from the Redemption Date originally established by the Trust for such Trust Securities to the date such Redemption Price is actually paid, in which case the actual payment date will be the date fixed for redemption for purposes of calculating the Redemption Price.

(iii) Subject to Section 4.3(a), if less than all the Outstanding Preferred HITS and Common Securities are to be redeemed on a Redemption Date, then the aggregate Liquidation Amount of Preferred HITS and Common Securities to be redeemed shall be allocated *pro rata* to the Common Securities and the Preferred HITS being redeemed based upon the relative Liquidation Amounts of such classes. The particular Preferred HITS to be redeemed shall be selected on a *pro rata* basis based upon their respective Liquidation Amounts not more than 60 days prior to the Redemption Date by the Property Trustee from the Outstanding Preferred HITS not previously called for redemption by any method the Property Trustee deems fair and appropriate, *provided* that so long as the Preferred HITS are in book-entry form, such selection shall be made in accordance with the customary procedures for the Clearing Agency for the Preferred HITS. The Property Trustee shall promptly notify the Securities Registrar in writing of the Preferred HITS selected for redemption and, in the case of any Preferred HITS selected for partial redemption, the Liquidation Amount thereof to be redeemed. For all purposes of this Declaration, unless the context otherwise requires, all provisions relating to the redemption of Preferred HITS shall relate, in the case of any Preferred HITS redeemed or to be redeemed only in part, to the portion of the aggregate Liquidation Amount of Preferred HITS that has been or is to be redeemed.

(iv) If less than all the Outstanding Corporate HITS are to be redeemed on a Redemption Date, then the particular Corporate HITS to be redeemed shall be selected on a *pro rata* basis based upon their respective Liquidation Amounts not more than 60 days prior to the Redemption Date by the Property Trustee from the Outstanding Corporate HITS not previously called for redemption by any method the Property Trustee deems fair and appropriate, *provided* that so long as the Corporate HITS are in book-entry form, such selection shall be made in accordance with the customary procedures for the Clearing Agency for the Corporate HITS. The Property Trustee shall promptly notify the Securities Registrar in writing of the Corporate HITS selected for redemption and, in the case of any Corporate HITS selected for partial redemption, the Liquidation Amount thereof to be redeemed. For all purposes of this Declaration, unless the context otherwise requires, all provisions relating to the redemption of Corporate HITS shall relate, in the case of any Corporate HITS redeemed or to be redeemed only in part, to the portion of the aggregate Liquidation Amount of Corporate HITS that has been or is to be redeemed.

Section 4.3 *Subordination of Common Securities.*

(a) If on any Distribution Date the Paying Agent lacks funds available from payments of interest, dividends or Contract Payments (as applicable) to make full Distributions then due on all of the outstanding Trust Securities in accordance with Section 4.1 (other than because of the Sponsor's proper exercise of its right to (i) defer payment of Contract Payments, resulting in Deferred Contract Payment Amounts, or (ii) defer payment of interest on the Notes, resulting in Deferred Note Interest Amounts), then:

(i) if the deficiency in funds results from the Sponsor's failure to make a full payment of interest on the Notes on an interest payment date for the Notes, then the available funds from

the Sponsor's payment of interest on the Notes shall be applied first to make the Distributions then due on the Preferred HITS and the Corporate HITS on a *pro rata* basis on such Distribution Date up to the amount of such Distributions corresponding to interest payments on the Notes (or, if less, the amount of the corresponding Distributions that would have been made on the Preferred HITS and Corporate HITS had the Sponsor made a full payment of interest on the Notes) before any such amount is applied to make a Distribution on Common Securities on such Distribution Date;

(ii) if the deficiency in funds results from the Sponsor's failure to make a full payment of Contract Payments on the Stock Purchase Contracts on a payment date for Contract Payments, then the available funds from the Sponsor's payment of Contract Payments shall be applied first to make Distributions then due on the Preferred HITS and the Treasury HITS on a *pro rata* basis on such Distribution Date up to the amount of such Distributions corresponding to the Contract Payments on the Stock Purchase Contracts (or, if less, the amount of the corresponding Distributions that would have been made on the Preferred HITS and the Treasury HITS had the Sponsor made a full payment of Contract Payments on the Stock Purchase Contracts) before any such amount is applied to make a Distribution on Common Securities on such Distribution Date; and

(iii) if the deficiency in funds results from the Sponsor's failure to pay a full dividend on shares of Preferred Stock on a dividend payment date for the Preferred Stock, then the available funds from the Sponsor's payment of dividends on the Preferred Stock shall be applied first to make Distributions then due on the Preferred HITS on a *pro rata* basis on such Distribution Date up to the amount of such Distributions corresponding to dividends on the Preferred Stock (or, if less, the amount of the corresponding Distributions that would have been made on the Preferred HITS and the Treasury HITS, if any, had the Sponsor paid a full dividend on the Preferred Stock) before any such amount is applied to make a Distribution on Common Securities on such Distribution Date.

(b) If on any Redemption Date for a redemption pursuant to Section 4.2(a) the Paying Agent lacks funds available from the Sponsor's redemption of shares of Preferred Stock to pay the full Redemption Price then due on all of the outstanding Trust Securities to be redeemed in accordance with Section 4.2, then (i) the available funds shall be applied first to pay the Redemption Price on the HITS to be redeemed on such Redemption Date and (ii) Common Securities shall be redeemed only to the extent funds are available for such purpose after the payment of the full Redemption Price on the HITS to be redeemed, as aforesaid.

(c) If an Early Dissolution Event occurs, no Liquidation Distributions shall be made on the Common Securities until full Liquidation Distributions have been made on each Class of HITS in accordance with Section 9.4(d).

(d) In the case of the occurrence of any Event of Default resulting from any Note Event of Default or Preferred Stock Default, the Holders of the Common Securities shall have no right to act with respect to any such Event of Default under this Declaration until the effect of all such Events of Default with respect to the HITS have been cured, waived or otherwise eliminated. Until all such Events of Default under this Declaration with respect to the HITS have been so cured, waived or otherwise eliminated, the Property Trustee shall act solely on behalf of the Holders of the HITS and not on behalf of the Holders of the Common Securities, and only the Holders of the HITS will have the right to direct the Property Trustee to act on their behalf.

Section 4.4 *Payment Procedures.*

Payments of cash Distributions in respect of the HITS shall, subject to the next succeeding sentence, be made by check mailed to the address of the Person entitled thereto as such address shall

appear on the Securities Register or, if the HITS are held by a Clearing Agency, such Distributions shall be made to the Clearing Agency by wire transfer of immediately available funds. A Holder of $1,000,000 or more in aggregate Liquidation Amount of HITS may receive payments of cash Distributions by wire transfer of immediately available funds upon written request to the Property Trustee not later than the 15th calendar day, whether or not a Business Day, before the relevant Distribution Date. Payments in respect of the Common Securities shall be made in such manner as shall be mutually agreed between the Property Trustee, the Paying Agent and the Holders of the Common Securities.

Section 4.5 *Tax Returns and Reports.*

The Regular Trustees shall prepare (or cause to be prepared), at the Sponsor's expense, and file all U.S. federal, state and local tax and information returns and reports required by the Declaration to be filed by or in respect of the Trust. In this regard, the Regular Trustees shall (a) prepare and file (or cause to be prepared and filed) all Internal Revenue Service forms required to be filed in respect of the Trust in each taxable year of the Trust, and (b) prepare and furnish (or cause to be prepared and furnished) to each Holder all Internal Revenue Service forms required to be provided by the Trust. The Regular Trustees shall provide the Sponsor and the Property Trustee with a copy of all such returns and reports promptly after such filing or furnishing. The Trustees shall comply with U.S. federal withholding and backup withholding tax laws and information reporting requirements with respect to any payments to Holders under the Trust Securities.

Section 4.6 *Payment of Expenses of the Trust.*

The Sponsor shall pay to the Trust, and reimburse the Trust for, the full amount of any costs, expenses or liabilities of the Trust (other than obligations of the Trust to pay the Holders of any HITS or other similar interests in the Trust the amounts due such Holders pursuant to the terms of the HITS or such other similar interests, as the case may be), including, without limitation, any taxes, duties or other governmental charges of whatever nature (other than withholding taxes) imposed on the Trust by the United States or any other taxing authority. Such payment obligation includes any such costs, expenses or liabilities of the Trust that are required by applicable law to be satisfied in connection with a dissolution of the Trust.

Section 4.7 *Payments under Indenture or Pursuant to Direct Actions.*

Any amount payable hereunder to any Holder of HITS (or any Owner with respect thereto) shall be reduced by the amount of any corresponding payment such Holder (or Owner) has directly received pursuant to Section 13.13 of the Base Indenture, Section 3.1 of the Stock Purchase Contract Agreement or Section 5.16 of this Declaration.

Section 4.8 *Combination of Treasury HITS and Preferred HITS after Stock Purchase Date.*

If either (x) there has been a Successful Remarketing or (y) there has been a Failed Remarketing but on the Stock Purchase Date there is no Deferred Note Interest Amount outstanding (but in the case of each of clause (x) and (y) only if the Stock Purchase Contract Agreement is fully performed on the Stock Purchase Date), at the Securities Registrar's opening of business on the Business Day next succeeding the Stock Purchase Date each Treasury HITS with its $1,000 Liquidation Amount shall automatically be and become a Preferred HITS with a $1,000 Liquidation Amount, and each Treasury HITS Certificate (whether or not a Book-Entry HITS Certificate) shall be deemed to represent a number of Preferred HITS equal to the number of Treasury HITS represented by such Treasury HITS Certificate immediately prior to the Securities Registrar's opening of business on such date. If there has been a Failed Remarketing and

on the Stock Purchase Date there is a Deferred Note Interest Amount outstanding, then Treasury HITS will continue to remain outstanding after the Stock Purchase Date until the first date on which no Deferred Note Interest Amount is outstanding or the subordinated notes are distributed to the holders of Preferred HITS (including because any notes delivered pursuant to Section 2.7(f) of the Fourteenth Supplemental Indenture have been fully paid) and, on the Business Day after all Deferred Note Interest Amounts have been fully paid, each Treasury HITS with its $1,000 Liquidation Amount shall automatically be and become a Preferred HITS with a $1,000 Liquidation Amount, and each Treasury HITS Certificate (whether or not a Book-Entry HITS Certificate) shall be deemed to represent a number of Preferred HITS equal to the number of Treasury HITS represented by such Treasury HITS Certificate immediately prior to the Securities Registrar's opening of business on such date. On or after such date as determined by this Declaration pursuant to either of the two preceding sentences, (a) upon surrender by a Holder of a Treasury HITS Certificate to the Securities Registrar, a Regular Trustee shall execute and deliver to the Securities Registrar (who shall then deliver to such Holder) a Preferred HITS Certificate representing the appropriate number of Preferred HITS, and the Securities Registrar shall enter such Holder as appropriate in the Securities Register for the Preferred HITS, and (b) as to Preferred HITS and Treasury HITS represented by Book-Entry HITS, the Sponsor, the Regular Trustees, the Property Trustee, the Securities Registrar and the Paying Agent shall cooperate in an effort to cause the Treasury HITS to become Preferred HITS in accordance with the rules and procedures of the applicable Clearing Agency (including, in the case of DTC if it is the Clearing Agency, adjustment if necessary or appropriate through DTC's Deposit/Withdrawal at Custodian DWAC system).

ARTICLE V

TRUST SECURITIES CERTIFICATES

Section 5.1 *Initial Ownership.*

Upon the formation of the Trust and the contribution by the Sponsor pursuant to Section 2.3 and until the issuance of the Trust Securities, and at any time during which no Trust Securities are outstanding, the Sponsor shall be the sole beneficial owner of the Trust.

Section 5.2 *The Trust Securities Certificates.*

The HITS Certificates shall be issued in minimum denominations of one HITS and integral multiples thereof (corresponding to $1,000 Liquidation Amount and integral multiples of $1,000 in excess thereof), and the Common Securities Certificates shall be issued in minimum denominations of one Common Security and integral multiples thereof (corresponding to $1,000 Liquidation Amount and integral multiples thereof). HITS Certificates and Common Securities Certificates shall not be issued in denominations representing fractions of a HITS or Common Security, as applicable. The Trust Securities Certificates shall be executed on behalf of the Trust by manual signature of at least one Regular Trustee and authenticated by manual signature of an authorized officer or other authorized signatory of the Securities Registrar. Trust Securities Certificates bearing the manual signatures of individuals who were, at the time when such signatures shall have been affixed, Regular Trustees shall be validly issued and entitled to the benefits of this Declaration, notwithstanding that such individuals or any of them shall have ceased to be Regular Trustees prior to the delivery of such Trust Securities Certificates or did not hold such offices at the date of delivery of such Trust Securities Certificates. A transferee of a Trust Securities Certificate shall become a Holder, and shall be entitled to the rights and subject to the obligations of a Holder hereunder, upon due registration of such Trust Securities Certificate in such transferee's name pursuant to Section 5.4, 5.11 or 5.13.

Section 5.3 *Execution and Delivery of Trust Securities Certificates.*

At the Time of Delivery, a Regular Trustee shall cause Trust Securities Certificates representing the number of Trust Securities of the applicable Class provided in Sections 2.4 and 2.5 to be executed on behalf of the Trust, authenticated by the Securities Registrar pursuant to a written order of the Trust to be executed by at least one Regular Trustee and delivered to the Property Trustee, or to a designee or custodian of the Property Trustee upon its written order executed by an authorized officer thereof, in denominations authorized by written order of Trust.

Section 5.4 *Registration of Transfer and Exchange of HITS Certificates.*

The Regular Trustees shall keep or cause to be kept, at the office or agency maintained pursuant to Section 5.8, a register or registers for the purpose of registering Trust Securities Certificates and transfers and exchanges of HITS Certificates (the "*Securities Register*") in which the Securities Registrar, subject to such reasonable regulations as it may prescribe, shall provide for the registration of HITS Certificates and Common Securities Certificates (subject to Section 5.10 in the case of the Common Securities Certificates) and registration of transfers and exchanges of HITS Certificates as herein provided. The provisions of Sections 8.1 (other than (c), (d), (e)(i), (e)(iii) and (e)(vii) thereof), 8.3 (other than (g) and (j) thereof) and 8.6 shall apply to the Securities Registrar in the same manner that by their terms they apply to the Property Trustee under the Collateral Agreement. The Regular Trustees shall take such action as shall be necessary to ensure that at all times there is a Securities Registrar and that, through the Stock Purchase Date, the same commercial bank is both Securities Registrar and Collateral Agent. By executing this Declaration, the Regular Trustees appoint The Bank of New York Trust Company, N.A., as the initial Securities Registrar. Subject to the second preceding sentence, the Regular Trustees may dismiss the Securities Registrar and appoint a commercial bank or trust company to act as successor Securities Registrar. Any Person acting as Securities Registrar shall be permitted to resign as Securities Registrar upon 30 days' written notice to the Regular Trustees and the Property Trustee.

Upon surrender for registration of transfer of any HITS Certificate at the office or agency maintained pursuant to Section 5.8, the Regular Trustees or any one of them shall execute on behalf of the Trust and deliver, in the name of the designated transferee or transferees, one or more new HITS Certificates in authorized denominations of a like aggregate Liquidation Amount dated the date of execution by such Regular Trustee or Trustees. At the option of a Holder, HITS Certificates may be exchanged for other HITS Certificates in authorized denominations of the same class and of a like aggregate Liquidation Amount upon surrender of the HITS Certificates to be exchanged at the office or agency maintained pursuant to Section 5.8. Neither the Trust nor the Securities Registrar shall be required, pursuant to the provisions of this Section 5.4, (a) to register the transfer of or exchange any HITS during a period beginning at the opening of business 15 days before the day of selection for redemption of HITS and ending at the close of business on the day of mailing of notice of redemption or (b) to transfer or exchange any HITS so selected for redemption in whole or in part, except, in the case of any HITS to be redeemed in part, any portion thereof not to be redeemed.

Every HITS Certificate presented or surrendered for registration of transfer or exchange shall be accompanied by a written instrument of transfer in form satisfactory to a Regular Trustee and the Securities Registrar duly executed by the Holder or his attorney duly authorized in writing. Each HITS Certificate surrendered for registration of transfer or exchange shall be canceled and subsequently disposed of by a Regular Trustee or the Securities Registrar in accordance with such Person's customary practice.

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

Section 5.5 *Mutilated, Destroyed, Lost or Stolen Trust Securities Certificates.*

If (a) any mutilated Trust Securities Certificate shall be surrendered to the Securities Registrar, or if the Securities Registrar shall receive evidence to its satisfaction of the destruction, loss or theft of any Trust Securities Certificate, and (b) there shall be delivered to the Securities Registrar and the Regular Trustees such security or indemnity as may be required by them to save each of them harmless, then in the absence of notice that such Trust Securities Certificate shall have been acquired by a protected purchaser, the Regular Trustees, or any one of them, on behalf of the Trust shall execute and make available for delivery, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Trust Securities Certificate, a new Trust Securities Certificate of like class, tenor and denomination. In connection with the issuance of any new Trust Securities Certificate under this Section 5.5, the Regular Trustees or the Securities Registrar 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 Trust Securities Certificate issued pursuant to this Section shall constitute conclusive evidence of an undivided beneficial interest in the assets of the Trust corresponding to that evidenced by the lost, stolen or destroyed Trust Securities Certificate, as if originally issued, whether or not the lost, stolen or destroyed Trust Securities Certificate shall be found at any time.

Section 5.6 *Persons Deemed Holders.*

The Trustees and the Securities Registrar shall each treat the Person in whose name any Trust Securities Certificate shall be registered in the Securities Register as the owner of such Trust Securities Certificate for the purpose of receiving Distributions and for all other purposes whatsoever, and none of the Trustees, the Regular Trustees and the Securities Registrar shall be bound by any notice to the contrary.

Section 5.7 *List of Holders' Names and Addresses.*

Each of the Sponsor and any one of the Regular Trustees will furnish or cause to be furnished to the Property Trustee:

(i) monthly, quarterly or semi-annually, as the case may be, not more than 15 days after each regular record date in each year, a list, in such form as the Property Trustee may reasonably require, of the names and addresses of the Holders of Trust Securities as of such regular record date, and

(ii) at such other times as the Property Trustee may request in writing, within 30 days after the receipt by the Sponsor and the Regular Trustees 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, *excluding* from any such list names and addresses received by the Property Trustee at any time that is acting as Securities Registrar.

The Property Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Property Trustee as provided in this Section 5.7 and the names and addresses of Holders received by the Property Trustee at any time that is acting as Securities Registrar. The Property Trustee may destroy any list furnished to it as provided in Section 5.7 upon receipt of a new list so furnished.

The rights of Holders to communicate with other Holders with respect to their rights under this Declaration or under the Trust Securities, and the corresponding rights and privileges of the Property Trustee, shall be as provided in the Trust Indenture Act.

Each Holder and each Owner shall be deemed to have agreed not to hold the Sponsor, the Property Trustee, the Delaware Trustee, the Regular Trustees or the Securities Registrar accountable by reason of the disclosure of its name and address, regardless of the source from which such information was derived.

Section 5.8 *Maintenance of Office or Agency.*

The Regular Trustees shall designate an office or offices or agency or agencies where HITS Certificates may be surrendered for registration of transfer or exchange and for payment, and where notices and demands to or upon the Trustees in respect of this Declaration and the Trust Securities Certificates may be served. The Regular Trustees initially designate c/o The Bank of New York Trust Company, N.A., 101 Barclay Street, 8 West, New York, New York, Attention: Corporate Trust Administration, as their office and agency for such purposes of surrendering for registration of transfer or exchange and for payment and designate c/o Bank of America Corporation, NC1-007-07-06, 100 North Tryon Street, Charlotte, North Carolina, 28255, Attention: Corporate Treasury, as their office and agency for the purposes of serving such demands and notices. A Regular Trustee shall give prompt written notice to the Sponsor, the Property Trustees and to the Holders of any change in the location of the Securities Register or any such office or agency.

Section 5.9 *Appointment of Paying Agent.*

The Paying Agent shall make Distributions to Holders from the Payment Account and shall report the amounts of such Distributions to the Property Trustee and the Regular Trustees. Any Paying Agent shall have the revocable power to withdraw funds from the Payment Account solely for the purpose of making the Distributions referred to above. The Regular Trustees may revoke such power and remove the Paying Agent in their sole discretion. The Paying Agent shall initially be The Bank of New York Trust Company, N.A. Any Person acting as Paying Agent shall be permitted to resign as Paying Agent upon 30 days' written notice to the Regular Trustees and the Property Trustee. If The Bank of New York Trust Company, N.A. shall no longer be the Paying Agent or a successor Paying Agent shall resign or its authority to act be revoked, the Regular Trustees shall appoint a successor (which shall be a bank or trust company) that is reasonably acceptable to the Property Trustee and the Sponsor to act as Paying Agent. Such successor Paying Agent or any additional Paying Agent shall execute and deliver to the Trustees an instrument in which such successor Paying Agent or additional Paying Agent shall agree with the Trustees that as Paying Agent, such successor Paying Agent or additional Paying Agent will hold all sums, if any, held by it for payment to the Holders in trust for the benefit of the Holders entitled thereto until such sums shall be paid to such Holders. The Paying Agent shall return all unclaimed funds to the Property Trustee and upon removal of a Paying Agent such Paying Agent shall also return all funds in its possession to the Property Trustee. The provisions of Sections 8.1 (other than (c), (d), (e)(i), (e)(iii) and (e)(vii) thereof), 8.3 (other than (g) and (j) thereof) and 8.6 shall apply also to the Paying Agent for so long as it shall act as Paying Agent and, to the extent applicable, to any other paying agent appointed hereunder, in the same manner that by their terms they apply to the Property Trustee. Any reference in this Agreement to the Paying Agent shall include any co-paying agent unless the context requires otherwise.

Section 5.10 *Ownership of Common Securities by Sponsor; Common Securities Certificate.*

(a) At the Time of Delivery, the Sponsor shall acquire beneficial and record ownership of the Common Securities. To the fullest extent permitted by law, other than a transfer in connection with a consolidation or merger of the Sponsor into another Person, or any conveyance, transfer or lease by the Sponsor of its properties and assets substantially as an entirety to any Person pursuant to Section 10.01 of the Base Indenture, any attempted transfer of the Common Securities other than to a direct or indirect subsidiary of the Sponsor shall be void. The Regular Trustees shall cause each Common Securities Certificate issued to the Sponsor to contain a legend consistent with this Section 5.10.

(b) A single Common Securities Certificate representing the Common Securities shall be issued to the Sponsor in the form of a definitive Common Securities Certificate.

Section 5.11 *Book-Entry HITS Certificates.*

(a) Except where Definitive HITS Certificates have been issued to Owners pursuant to Sections 5.11(d) through 5.11(f) or Section 5.15:

(i) the provisions of this Section 5.11(a) shall apply and be in full force and effect;

(ii) the Securities Registrar, the Paying Agent and the Trustees shall be entitled to deal with the Clearing Agency, or its nominee, for all purposes of this Declaration relating to the Book-Entry HITS Certificates (including the payment of the Liquidation Amount of and Distributions on the HITS evidenced by Book-Entry HITS Certificates and the giving of instructions or directions to Owners of HITS evidenced by Book-Entry HITS Certificates) as the sole Holder of HITS evidenced by Book-Entry HITS Certificates and shall have no obligations to the Owners thereof, and neither any Clearing Agency Participants nor any other Persons on whose behalf Clearing Agency Participants may act shall have any rights under this Declaration with respect to any Book-Entry HITS Certificates registered in the name of the Clearing Agency or any nominee thereof or otherwise;

(iii) to the extent that the provisions of this Section 5.11 conflict with any other provisions of this Declaration, the provisions of this Section 5.11 shall control; and

(iv) the rights of the Owners of the Book-Entry HITS Certificates shall be exercised only through the Clearing Agency and shall be limited to those established by law and agreements between such Owners and the Clearing Agency and/or the Clearing Agency Participants. Unless and until Definitive HITS Certificates are issued pursuant to Sections 5.11(d) through 5.11(f) or Section 5.15, the initial Clearing Agency will make book-entry transfers among the Clearing Agency Participants and receive and transmit payments on the HITS to such Clearing Agency Participants. Notwithstanding the foregoing, (x) the Holder of a Book-Entry HITS Certificate may grant proxies and otherwise authorize any Person, including the Clearing Agency Participants and other Persons that are Owners, to take any action that a Holder of HITS of the relevant Class is entitled to take under this Declaration or the HITS of the relevant Class, and (y) nothing herein shall prevent the Securities Registrar or the Trustees from giving effect to any written certification, proxy or other authorization furnished by the Clearing Agency or shall impair, as between the Clearing Agency and the Clearing Agency Participants, the operation of customary practices governing the exercise of the rights of an Owner of any HITS.

(b) Any Book-Entry HITS Certificate shall represent such number of the Outstanding HITS of the applicable Class as shall be specified therein and may provide that it shall represent the aggregate number of Outstanding HITS of the applicable Class from time to time endorsed thereon and that the

aggregate number of Outstanding HITS of the applicable Class represented thereby may from time to time be reduced or increased, as appropriate, to reflect transfers, redemptions or exchanges (including the Exchanges pursuant to Section 5.13). Any endorsement of a Book-Entry HITS Certificate to reflect the number, or any increase or decrease in the number, of Outstanding HITS of the applicable Class represented thereby shall be made by the Securities Registrar (i) in such a manner and upon instructions given by such Person or Persons as shall be specified in such HITS of the applicable Class or in a Sponsor order to be delivered to the Securities Registrar pursuant to Section 5.3 or (ii) otherwise in accordance with written instructions or such other written form or instructions as is customary for the Clearing Agency for such HITS, from such Clearing Agency or its nominee on behalf of any Person having a beneficial interest in such Book-Entry HITS Certificate. Subject to the provisions of Section 5.4, the Securities Registrar shall deliver and redeliver any Book-Entry HITS Certificate in the manner and upon instructions given by the Person or Persons specified in such Book-Entry HITS Certificate or in the applicable Sponsor order (and a Regular Trustee shall execute such Book-Entry HITS Certificate as shall be necessary in order to give effect to the foregoing).

(c) Any Book-Entry HITS Certificate may be deposited with the Clearing Agency or its nominee, or may remain in the custody of the Certificate Custodian.

(d) Notwithstanding Section 5.4, transfers of a Book-Entry HITS Certificate shall be limited to transfers in whole, but not in part, to the Clearing Agency, its successors or their respective nominees. Interests of Owners in a Book-Entry HITS Certificate may be transferred in accordance with the rules and procedures of the Clearing Agency. Definitive HITS Certificates shall be transferred to Owners in exchange for their beneficial interests in a Book-Entry HITS Certificate if, and only if, either (1) the Clearing Agency notifies the Sponsor and the Securities Registrar that it is unwilling or unable to continue as Clearing Agency for the Book-Entry HITS or if at any time the Clearing Agency ceases to be a Clearing Agency registered under the Exchange Act and, in either case, a successor Clearing Agency is not appointed by the Sponsor within 90 days of such notice, (2) an Event of Default has occurred and is continuing and the Securities Registrar has received a request from the Clearing Agency to issue Definitive HITS Certificates of each Class in lieu of all or a portion of the Book-Entry HITS (in which case a Regular Trustee shall execute and deliver Definitive HITS Certificates within 30 days of such request), or (3) the Sponsor determines not to have the HITS represented by the Book-Entry HITS Certificates.

(e) In connection with any transfer of a portion of the beneficial interests in a Book-Entry HITS Certificate to Owners pursuant to this Section 5.11, the Securities Registrar shall reflect on its books and records the date and a decrease in the number of Book-Entry HITS of the applicable Class in an amount equal to the number of such HITS of the applicable Class to be transferred, and a Regular Trustee shall execute and deliver one or more Definitive HITS Certificates of the same Class representing the appropriate number of HITS of such Class.

(f) In connection with the transfer of all the beneficial interests in a Book-Entry HITS Certificate to Owners pursuant to this Section 5.11, the Book-Entry HITS Certificates shall be deemed to be surrendered to the Securities Registrar for cancellation, and a Regular Trustee shall execute and deliver to each Owner identified by the Clearing Agency in exchange for its beneficial interest in the Book-Entry HITS Certificate being cancelled, a Definitive HITS Certificate representing an equal number of HITS of the applicable Class.

(g) None of the Trustees, the Securities Registrar, the Paying Agent or the Sponsor will have any responsibility or liability for any acts or omissions of any Clearing Agency with respect to any Book-Entry HITS, or any aspect of the records relating to, or payments made on account of, HITS by the

Clearing Agency, or for maintaining, supervising or reviewing any records of the Clearing Agency relating to the HITS, or for any transactions between or among a Clearing Agency and a Clearing Agency Participant and/or an Owner of a beneficial interest in any Book-Entry HITS for transfers of beneficial interests in any Book-Entry HITS. None of the Trustees, the Securities Registrar, the Paying Agent or the Sponsor shall be liable for any delay by the Clearing Agency in identifying Owners, and each such Person may conclusively rely on, and shall be protected in relying on, instructions from the Clearing Agency for all purposes (including with respect to the registration and delivery, in the respective amounts, of Definitive HITS Certificates to be issued).

Section 5.12 *Notices to Clearing Agency.*

To the extent that a notice or other communication to the Holders is required under this Declaration, for so long as HITS are represented by Book-Entry HITS Certificates, the Regular Trustees shall give all such notices and communications specified herein to be given to the Clearing Agency, and shall have no obligations to the Owners.

Section 5.13 *Exchanges.*

(a) This Section 5.13 provides for the procedures pursuant to which Holders:

(i) of Preferred HITS may exchange Preferred HITS and Qualifying Treasury Securities for Treasury HITS and Corporate HITS; and

(ii) of Treasury HITS and Corporate HITS may exchange Treasury HITS and Corporate HITS for Preferred HITS and Qualifying Treasury Securities, (each, an "*Exchange*", and the terms "*Exchanged*", "*Exchanging*" and "*Exchanges*" having correlative meanings). All deposits, deliveries or transfers by a Holder pursuant to this Section 5.13 of Preferred HITS, Corporate HITS and Qualifying Treasury Securities shall be made by Book-Entry Transfer unless the recipient of such deposit, delivery or transfer expressly agrees otherwise in writing. A Holder who elects to an Exchange pursuant to this Section 5.13 shall be responsible for any fees or expenses associated therewith.

(b) Subject to the conditions set forth in this Declaration, during any Exchange Period a Holder of Preferred HITS may effect an Exchange of Preferred HITS and Qualifying Treasury Securities having a principal amount equal to the Liquidation Amount of such Preferred HITS for Treasury HITS and Corporate HITS, each having a Liquidation Amount equal to the Liquidation Amount of such Preferred HITS, by:

(i) depositing with the Collateral Agent the treasury security that is the Qualifying Treasury Security on the date of deposit, in the principal amount of $1,000 for each Preferred HITS being Exchanged;

(ii) transferring the Preferred HITS being Exchanged to the Securities Registrar; and

(iii) delivering to the Collateral Agent and the Securities Registrar, together with the deposit of Qualifying Treasury Securities deposited pursuant to clause (i) and the transfer of Preferred HITS pursuant to clause (ii), a duly executed and completed "*Splitting Notice and Request*" in the form printed on the reverse side of the form of Preferred HITS Certificate (x) stating that the Holder is depositing the appropriate Qualifying Treasury Securities with the Collateral Agent for deposit in the Collateral Account, (y) stating that the Holder is transferring the related Preferred HITS to the Securities

Registrar in connection with an Exchange of such Preferred HITS and Qualifying Treasury Securities for a Like Amount of Treasury HITS and Corporate HITS, and (z) requesting the delivery to the Holder of such Treasury HITS and Corporate HITS.

(c) Upon the deposit and transfer pursuant to Section 5.13(b) and receipt of the notice and request referred to in Section 5.13(b)(iii):

(i) the Collateral Agent will release Pledged Notes of a Like Amount from the Pledge, transfer such Pledged Notes to the Custody Account free and clear of the Sponsor's security interest therein, and confirm to the Property Trustee in writing that such release and transfer has occurred;

(ii) the Collateral Agent shall continue to hold such Notes in the Custody Account as Custodial Agent for the Trust in connection with Corporate HITS for which such Notes are Corresponding Assets; and

(iii) the Securities Registrar, pursuant to the procedures provided for in Section 5.11 dealing with increasing and decreasing the number of HITS evidenced by Book-Entry HITS Certificates, shall cancel the number of Preferred HITS transferred pursuant to Section 5.13(b)(ii) and deliver a Like Amount of Treasury HITS and Corporate HITS to the Holder, all by making appropriate notations on the Book-Entry HITS Certificates of the appropriate Class.

(d) Subject to the conditions set forth in this Declaration, during any Exchange Period a Holder of Treasury HITS and Corporate HITS may effect an Exchange of Treasury HITS and Corporate HITS for Preferred HITS and Pledged Treasury Securities having a principal amount equal to the Liquidation Amount of each of the Treasury HITS and Corporate HITS being Exchanged, by:

(i) transferring the Treasury HITS and the Corporate HITS being Exchanged to the Securities Registrar; and

(ii) delivering to the Securities Registrar, together with the transfer of Treasury HITS and Corporate HITS pursuant to clause (i), and concurrently delivering to the Collateral Agent a duly executed and completed "*Recombination Notice and Request*" in the form printed on the reverse side of the form of Corporate HITS Certificate and Treasury HITS Certificate, (x) stating that the Holder is transferring the related Treasury HITS and Corporate HITS to the Securities Registrar in connection with the Exchange of such Treasury HITS and Corporate HITS for a Like Amount of each of Preferred HITS and Qualifying Treasury Securities, (y) requesting the Collateral Agent to release from the Pledge and deliver to the Holder Qualifying Treasury Securities in a principal amount equal to the Liquidation Amount of each of the Treasury HITS and Corporate HITS being exchanged, and (z) requesting the Securities Registrar to deliver to the Holder Preferred HITS of a Like Amount.

(e) Upon the transfer pursuant to Section 5.13(d) and receipt of the notice and request referred to in Section 5.13(d):

(i) the Collateral Agent will release Pledged Treasury Securities of a Like Amount from the Pledge and deliver such formerly Pledged Treasury Securities to the Holder free and clear of the Sponsor's security interest therein, and confirm in writing to the Property Trustee and the Regular Trustees that such release and transfer has occurred;

(ii) the Collateral Agent will transfer a Like Amount of Notes from the Custody Account to the Collateral Account, re-subjecting such Notes to the Pledge; and

(iii) the Securities Registrar, pursuant to the procedures provided for in Section 5.11 dealing with increasing and decreasing the number of HITS evidenced by Book-Entry HITS Certificates, shall cancel the number of Treasury HITS and Corporate HITS delivered pursuant to Section 5.13(d) and deliver a Like Amount of Preferred HITS to the Holder, all by making appropriate notations on the Book-Entry HITS Certificates of the appropriate Class.

Section 5.14 *Remarketing Elections.*

(a) This Section 5.14 provides for the procedures pursuant to which a Holder:

(i) of Preferred HITS may elect (a "*Contingent Exchange Election*") to cause the Pledged Notes that are Corresponding Assets for such Holder's Preferred HITS not to be offered in a Remarketing, with the consequence that such Holder will receive in exchange Treasury HITS and Corporate HITS in a Like Amount if the Remarketing is Successful; and

(ii) of Corporate HITS may elect (a "*Contingent Disposition Election*") to cause the Notes that are Corresponding Assets for such Holder's Corporate HITS to be offered in the Remarketing, with the consequence that such Holder will receive the cash proceeds, net of the allocable portion of the Remarketing Agent's fee, of the Remarketing of such Notes if the Remarketing is Successful.

(b) Upon the written instruction of the Sponsor, the Property Trustee shall give appropriate instructions to the Collateral Agent and the Remarketing Agent in accordance with the Remarketing Agreement to offer for sale in each Remarketing, and if the Remarketing is Successful sell as part of such Remarketing, a principal amount of Notes equal to 100% of the principal amount of Notes included in the Trust Property *minus* the sum of (i) the Liquidation Amount of Preferred HITS as to which a Contingent Exchange Election has been made and (ii) the Liquidation Amount of Corporate HITS other than Corporate HITS as to which a Contingent Disposition Election has been made.

(c) All deposits, deliveries or transfers by a Holder pursuant to this Section 5.14 of Preferred HITS, Corporate HITS and treasury securities (including Qualifying Treasury Securities) shall be made by Book-Entry Transfer unless the recipient of such deposit, delivery or transfer expressly agrees otherwise in writing.

(d) Subject to the conditions set forth in this Declaration, a Holder of Preferred HITS may make a Contingent Exchange Election by:

(i) during the period that commences with the Collateral Agent's and the Securities Registrar's opening of normal business hours on the tenth Business Day immediately preceding the first day of a Remarketing Period and ending at 3:00 p.m., New York City time, on the second Business Day immediately preceding the first day of such Remarketing Period, transferring the Preferred HITS that are the subject of such Contingent Exchange Election to the Securities Registrar, accompanied by a duly executed and completed *"Notice of Contingent Exchange Election"* in the form printed on the reverse side of the form of Preferred HITS Certificate; and

(ii) by not later than 3:00 p.m., New York City time, on the second Business Day immediately preceding the first day of such Remarketing Period, depositing with the Collateral Agent, the treasury security that is the Qualifying Treasury Security on the date of deposit, in the amount of $1,000 for each Preferred HITS that is subject to the Contingent Exchange Election.

(e) If a Holder has made an effective Contingent Exchange Election in accordance with the foregoing provisions:

(i) if the related Remarketing is Successful:

(w) the Collateral Agent shall (A) instruct the Securities Intermediary to release from the Pledge and deliver to the Remarketing Agent the Pledged Notes for which no election has been validly made pursuant to Section 8.02(a) of the Collateral Agreement, free and clear of the Corporation's security interest therein, against delivery by the Remarketing Agent of Qualifying Treasury Securities purchased with the net Proceeds of the sale of such Pledged Notes in the Remarketing for deposit in the Collateral Account, (B) instruct the Securities Intermediary to release from the Pledge and (C) Transfer to the Custody Account the Pledged Notes for which an election has been validly made pursuant to Section 8.02(a) of the Collateral Agreement, free and clear of the Sponsor's security interest therein, upon delivery by the Collateral Agent to the Securities Intermediary for deposit into the Collateral Account the Qualifying Treasury Securities to be deposited in connection with such elections, and confirm to the Property Trustee in writing that such instructions have been delivered;

(x) the Securities Intermediary will (A) release the Pledged Notes from the Pledge, Transfer such Pledged Notes, free and clear of the Pledge, (x) to the Remarketing Agent in the case of Pledged Notes for which no election has been validly made pursuant to Section 8.02(a) of the Collateral Agreement and (y) to the Custody Account in the case of Pledged Notes for which an election has been validly made pursuant to Section 8.02(a) of the Collateral Agreement, (B) deposit in the Collateral Account as Pledged Treasury Securities the Qualifying Treasury Securities deposited with the Collateral Agent pursuant to Section 8.02(a) of the Collateral Agreement or delivered by the Remarketing Agent and (C) confirm to the Property Trustee in writing that such release, Transfer and deposit have occurred;

(y) the Custodial Agent shall hold such Notes delivered to it pursuant to clause (ii)(y) of this Section 8.02(b) of the Collateral Agreement in the Custody Account; and

(z) the Securities Registrar shall cancel the number of Preferred HITS Transferred pursuant to Section 8.02(a) of the Collateral Agreement and deliver a Like Amount of Corporate HITS and Treasury HITS to the Holder in accordance with the procedures provided for in this Section 5.14.

(ii) if the related Remarketing is not Successful:

(x) as soon as reasonably practicable after the Remarketing, the Collateral Agent will deliver back to such Holder the Qualifying Treasury Securities delivered by such Holder to the Collateral Agent pursuant to Section 8.02(a) of the Collateral Agreement; and

(y) the Securities Registrar will disregard the delivery by such Holder of Preferred HITS pursuant to Section 8.02(a) of the Collateral Agreement, with the consequence that such Holder shall be deemed to continue to hold such Preferred HITS.

(f) Subject to the conditions set forth in this Declaration, a Holder of Corporate HITS may make a Contingent Disposition Election by, during the period that commences with the Securities Registrar's opening of normal business hours on the tenth Business Day immediately preceding the first day of a Remarketing Period and ending at 3:00 p.m., New York City time, on the second Business Day immediately preceding the first day of such Remarketing Period, transferring the Corporate HITS that are the subject of such Contingent Disposition Election to the Securities Registrar, accompanied by a duly completed "*Notice of Contingent Disposition Election*" in the form printed on the reverse side of the form of Corporate HITS Certificate to the Securities Registrar and the Custodial Agent.

(g) If a Holder has made an effective Contingent Disposition Election in accordance with the foregoing provisions:

(i) if the related Remarketing is Successful:

(x) the Securities Registrar shall cancel the number of Corporate HITS Transferred pursuant to Section 8.03(a) of the Collateral Agreement in accordance with the procedures provided for in Section 5.11;

(y) the Custodial Agent shall deliver Custody Notes in the aggregate principal amount with respect to which elections have been validly made pursuant to Section 8.03(a) of the Collateral Agreement to the Remarketing Agent on the Remarketing Settlement Date; and

(z) on or promptly after the Remarketing Settlement Date, the Custodial Agent will pay to the Property Trustee the net Proceeds of the Custody Notes received from the Remarketing Agent.

(ii) if the Remarketing is not Successful, the Securities Registrar will disregard the delivery by such Holder of Corporate HITS pursuant to Section 5.14(f), with the consequence that such Holder shall be deemed to have continued to hold such Corporate HITS.

Section 5.15 *Definitive HITS Certificates.*

The HITS Certificates issued at the Time of Delivery shall be issued as Book-Entry HITS Certificates in accordance with Section 2.4. Additionally, if (a) the Sponsor advises the Trustees in writing that the Clearing Agency (i) has notified the Sponsor that it is unwilling or unable to continue as Clearing Agency for such HITS Certificates and no successor Clearing Agency has been appointed within 90 days of this notice or (ii) has ceased to be a clearing agency registered under the Exchange Act at a time when the Clearing Agency is required to be so registered to act as a depositary and no successor Clearing Agency has been appointed within 90 days after the Sponsor has learned that the Clearing Agency has ceased to be so registered, (b) an Event of Default has occurred and is continuing and the Securities Registrar has received a request from the Clearing Agency to issue Definitive HITS Certificates for each applicable Class, (c) the Sponsor at its option advises the Trustees in writing that it elects to terminate the book-entry system through the Clearing Agency, or (d) Owners of HITS Certificates representing beneficial interests aggregating at least a Majority in Liquidation Amount of the HITS of all Classes, considered together as a single Class, advise the Regular Trustees in writing that the continuation of a book-entry system through the Clearing Agency is no longer in the best interest of the Owners of HITS Certificates, then the Regular Trustees shall notify the other Trustees and the Clearing Agency, and the Clearing Agency, in accordance with its customary rules and procedures, shall notify all Clearing Agency Participants for whom it holds HITS of the occurrence of any such event and of the availability of the Definitive HITS Certificates to Owners of such class or classes, as applicable, requesting the same.

Upon surrender to the Regular Trustees of the typewritten HITS Certificate or Certificates representing the Book-Entry HITS Certificates by the Clearing Agency, accompanied by registration instructions, the Regular Trustees, or any one of them, shall execute the Definitive HITS Certificates in accordance with the instructions of the Clearing Agency. Neither the Securities Registrar nor the Trustees shall be liable for any delay in delivery of such instructions and may conclusively rely on, and shall be protected in relying on, such instructions. Upon the issuance of Definitive HITS Certificates, the Trustees shall recognize the Holders of the Definitive HITS Certificates as holders of Trust Securities. The Definitive HITS Certificates shall be typewritten, printed, lithographed or engraved or may be produced in any other manner as is reasonably acceptable to the Regular Trustees that meets the requirements of any stock exchange or automated quotation system on which the HITS are then listed or approved for trading, as evidenced by the execution thereof by the Regular Trustees or any one of them.

Section 5.16 *Rights of Holders; Waivers of Past Defaults.*

(a) The legal title to the Trust Property is vested exclusively in the Property Trustee (in its capacity as such) in accordance with Section 2.9, and the Holders shall not have any right or title therein other than the beneficial interest in the Trust conferred by their Trust Securities and they shall have no right to call for any partition or division of property, profits or rights of the Trust except as described below. The Trust Securities shall be personal property giving only the rights specifically set forth therein and in this Declaration. The HITS shall have no preemptive or similar rights and when issued and delivered to Holders against payment of the purchase price therefor will be fully paid and nonassessable beneficial interests in the Trust. The Holders of the Trust Securities, in their capacities as such, shall be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware.

(b) For so long as any HITS of the Affected Classes remain Outstanding, if, upon a Note Event of Default, the Note Trustee fails or the holders of not less than 25% in principal amount of the outstanding Notes fail to declare the principal of all of the Notes to be immediately due and payable, the Property Trustee or the Holders of at least 25% in Liquidation Amount of the HITS of the Affected Classes then Outstanding, considered together as a single Class, shall have the right to make such declaration by a notice in writing to the Sponsor, the Note Trustee and the Property Trustee, in the case of notice by the Holders of the HITS of the Affected Classes, or to the Sponsor, the Note Trustee and the Holders of the HITS of the Affected Classes, in the case of notice by the Property Trustee, and upon any such declaration such principal amount of and the accrued interest on all of the Notes shall become immediately due and payable as provided in the Indenture, *provided* that the payment of principal and interest on such Notes shall remain subordinated to the extent provided in the Indenture.

At any time after a declaration of acceleration with respect to the Notes has been made and before a judgment or decree for payment of the money due has been obtained by the Note Trustee as in the Indenture provided, the Holders of at least a Majority in Liquidation Amount of the HITS of the Affected Classes, considered together as a single Class, by written notice to the Property Trustee, the Sponsor and the Note Trustee, may rescind and annul such declaration and its consequences if:

(i) the Sponsor has paid or deposited with the Note Trustee a sum sufficient to pay

(A) all overdue installments of interest on all of the Notes,

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

(C) all sums paid or advanced by the Note Trustee under the Indenture and the reasonable compensation, expenses, disbursements and advances of the Note Trustee and the Property Trustee, their agents and counsel; and

(ii) all Note Events of Default, other than the nonpayment of the principal of the Notes that has become due solely by such acceleration, have been cured or waived as provided in Section 5.07 of the Base Indenture.

The Holders of at least a Majority in Liquidation Amount of the HITS of the Affected Classes, considered together as a single Class, may, on behalf of the Holders of all the HITS of the Affected Classes, waive any past default under the Indenture, except a default in the payment of principal or interest (unless such default has been cured and a sum sufficient to pay all matured installments of interest and principal due otherwise than by acceleration has been deposited with the Note Trustee) or a default in respect of a covenant or provision that under the Indenture cannot be modified or amended without the consent of the holder of each outstanding Note. No such rescission shall affect any subsequent default or impair any right consequent thereon.

Upon receipt by the Property Trustee of written notice declaring such an acceleration, or rescission and annulment thereof, by Holders of any part of the HITS of the Affected Classes a record date shall be established for determining Holders of Outstanding HITS of the Affected Classes entitled to join in such notice, which record date shall be at the close of business on the day the Property Trustee receives such notice. The Holders on such record date, or their duly designated proxies, and only such Persons, shall be entitled to join in such notice, whether or not such Holders remain Holders after such record date; *provided* that unless such declaration of acceleration, or rescission and annulment, as the case may be, shall have become effective by virtue of the requisite percentage having joined in such notice prior to the day that is 90 days after such record date, such notice of declaration of acceleration, or rescission and annulment, as the case may be, shall automatically and without further action by any Holder be canceled and of no further effect. Nothing in this paragraph shall prevent a Holder, or a proxy of a Holder, from giving, after expiration of such 90-day period, a new written notice of declaration of acceleration, or rescission and annulment thereof, as the case may be, that is identical to a written notice that has been canceled pursuant to the proviso to the preceding sentence, in which event a new record date shall be established pursuant to the provisions of this Section 5.16(b).

(c) For so long as any HITS of the Affected Classes remain Outstanding, to the fullest extent permitted by law and subject to the terms of this Declaration and the Indenture, upon a Note Event of Default, any Holder of HITS of the Affected Classes shall have the right to institute a proceeding directly against the Sponsor, pursuant to Section 13.13 of the Base Indenture, for enforcement of payment to such Holder of any amounts payable in respect of a Like Amount of Notes (a "*Direct Action*"). Except as set forth in Section 5.16(b) and this Section 5.16(c), the Holders of HITS of the Affected Classes shall have no right to exercise directly any right or remedy available to the holders of, or in respect of, the Notes.

(d) For so long as any HITS of the Affected Classes remain Outstanding, to the fullest extent permitted by law and subject to the terms of this Declaration and the Stock Purchase Contract Agreement, if the Sponsor fails to pay when due any Contract Payments under the Stock Purchase Contract Agreement (after giving effect to the Sponsor's deferral right under Section 2.7 of the Stock Purchase Contract Agreement), any Holder of HITS of the Affected Classes shall have the right to institute a proceeding directly against the Sponsor, pursuant to Section 3.1 of the Stock Purchase Contract Agreement, for enforcement of payment to such Holder of any amounts payable in respect of a Like Amount of Stock Purchase Contracts (also a "*Direct Action*"). Except as set forth in this Section 5.16(d), the Holders of HITS of the Affected Classes shall have no right to exercise directly any right or remedy under the Stock Purchase Contract Agreement available to the Trust (acting through the Property Trustee) as a party thereto.

(e) Except as otherwise provided in Sections 5.16(a), (b), (c) and (d), the Holders of at least a Majority in Liquidation Amount of the HITS may, on behalf of the Holders of all the HITS, waive any past default or Event of Default and its consequences. Upon such waiver, any such default or Event of Default shall cease to exist, and any default or Event of Default arising there from 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 or impair any right consequent thereon.

Section 5.17 *CUSIP Numbers.*

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

Section 5.18 *Remarketing Procedures.*

(a) The Sponsor will give notice to the Property Trustee of a Remarketing at least 28 days prior to the first day of the related Remarketing Period. Upon written instruction of the Sponsor, the Property Trustee will give holders of Preferred HITS and Corporate HITS, and will request that the Clearing Agency give to its participants holding Preferred HITS or Corporate HITS, notice of a Remarketing at least 21 days prior to the first day of the related Remarketing Period. Such notices will set forth:

(i) the beginning and ending dates of the Remarketing Period and the applicable Remarketing Settlement Date and Stock Purchase Date in the event the Remarketing is successful;

(ii) for interest periods for the Notes commencing on or after the Remarketing Settlement Date, the applicable interest payment dates and related record dates;

(iii) any change in the stated maturity date of the Notes and, if applicable, the date on and after which the Sponsor will have the right to redeem the Notes (which is subject to Section 3.2 and 3.3 of the Fourteenth Supplemental Indenture);

(iv) whether in connection with an Early Remarketing that is not the first scheduled Remarketing, the Sponsor's obligations under the Notes will remain subordinated to Senior Obligations (as defined in the Fourteenth Supplemental Indenture) after the Remarketing Settlement Date and, if not, whether the interest deferral provisions of the Notes will continue to apply to the Notes after the Remarketing Settlement Date;

(v) any other changes in the terms of the Notes notified by the Sponsor in connection with such Remarketing pursuant to Section 3.2 of the Fourteenth Supplemental Indenture (including on a Final Remarketing that is a Failed Remarketing, any change in the Maturity Date (as defined in the Fourteenth Supplemental Indenture) and, if applicable, the date on or after which the Trust will have the right to redeem the Notes (which is subject to Section 3.2 of the Fourteenth Supplemental Indenture));

(vi) the procedures a Holder of Preferred HITS must follow to elect to exchange its Preferred HITS for Treasury HITS and Corporate HITS if the Remarketing is Successful, and the date by which such election must be made; and

(vii) the procedures a Holder of Corporate HITS must follow to elect to dispose of its Corporate HITS in connection with a Remarketing and the date by which such election must be made.

ARTICLE VI

ACTS OF HOLDERS; MEETINGS; VOTING

Section 6.1 *Limitations on Voting Rights.*

(a) Except as expressly provided in this Declaration and in the Indenture and as otherwise required by law, no Holder of HITS shall have any right to vote or in any manner otherwise control the administration, operation and management of the Trust or the obligations of the parties hereto, nor shall anything herein set forth, or contained in the terms of the Trust Securities Certificates, be construed so as to constitute the Holders from time to time as partners or members of an association.

(b) So long as any Notes are held by the Property Trustee on behalf of the Trust, the Trustees shall not (i) direct the time, method and place of conducting any proceeding for any remedy available to the Note Trustee, or execute any trust or power conferred on the Note Trustee with respect to the Notes, (ii) waive any past default that may be waived under Section 5.07 of the Base Indenture, (iii) exercise any right to rescind or annul a declaration that the principal of all the Notes shall be due and payable, or (iv) consent to any amendment, modification or termination of the Indenture or the Notes, where such consent shall be required by the holders of the Notes pursuant to the terms of the Indenture, without, in each case, obtaining the prior approval of the Holders of at least a Majority in Liquidation Amount of the Preferred HITS and the Corporate HITS then Outstanding, considered together as a single Class; *provided*, *however*, that where a consent under the Indenture would require the consent of each holder of Notes affected thereby, no such consent shall be given by the Property Trustee without the prior written consent of each Holder of Preferred HITS and Corporate HITS. The Property Trustee shall not revoke any action previously authorized or approved by a vote of the Holders of the Preferred HITS and the Corporate HITS, except by a subsequent vote of the Holders of the Preferred HITS and the Corporate HITS. The Property Trustee shall notify all Holders of the Preferred HITS and the Corporate HITS of any notice of default received with respect to the Notes. In addition to obtaining the foregoing approvals of the Holders of the Preferred HITS and the Corporate HITS, prior to taking any of the foregoing actions, the Regular Trustees shall, at the expense of the Sponsor, obtain an Opinion of Counsel experienced in such matters to the effect that such action shall not cause the Trust to be classified as an association or a publicly traded partnership taxable as a corporation for U.S. federal income tax purposes.

(c) For so long as any Stock Purchase Contracts are outstanding, the Trustees may consent to any amendment to or modification of the Stock Purchase Contract Agreement or the Collateral Agreement, without having obtained the prior approval of the Holders of any HITS to such amendment or modification, for the purposes of (i) evidencing the succession of another person to the Trust's or the Property Trustee's obligations thereunder, (ii) adding to the covenants therein for the benefit of the Trust or the Property Trustee or to surrender any of the Sponsor's rights or powers thereunder, (iii) evidencing and providing for the acceptance of appointment of a successor Collateral Agent, Custodial Agent or Securities Intermediary under the Collateral Agreement, (iv) curing any ambiguity, or correcting or supplementing any provisions that may be inconsistent, (v) conforming the terms of the Stock Purchase Contract Agreement or the Collateral Agreement, to the descriptions thereof in the Prospectus, or (vi) making any other provisions with respect to such matters or questions, *provided* that such action

pursuant to clauses (iv) and (vi) shall not adversely affect the interest of the Holders of HITS of any Class in any material respect. The Trustees may, with the consent of the Holders of not less than a Majority in Liquidation Amount of the Preferred HITS and Treasury HITS then Outstanding, considered together as a single Class, agree to any other amendment to or modification of the Stock Purchase Contract Agreement or the Collateral Agreement, except that, without obtaining the prior written consent of each Holder of Preferred HITS and Treasury HITS then Outstanding, the Trustees may not agree to any amendment or modification that would (A) change any payment dates for Contract Payments, (B) change the amount or type of Pledged Notes or Pledged Treasury Securities required to be pledged under the Collateral Agreement, impair the right of the Property Trustee (on behalf of the Trust) to receive distributions on Pledged Notes or Pledged Treasury Securities or otherwise adversely affect the Trust's rights in or to the Pledged Notes or Pledged Treasury Securities, (C) change the place or currency or reduce any Contract Payments, (D) impair the Property Trustee's right (or any Holder's right pursuant to Section 5.16(d)) to institute suit for the enforcement of the Stock Purchase Contracts or payment of any Contract Payments, or (E) reduce the number of shares of Preferred Stock purchasable under the Stock Purchase Contracts, increase the price to purchase Preferred Stock upon settlement of the Stock Purchase Contracts, change the Stock Purchase Date or otherwise adversely affect the Trust's rights under the Stock Purchase Contracts.

(d) So long as any shares of Preferred Stock are held by the Property Trustee on behalf of the Trust, the Trustees shall not waive any Preferred Stock Default without obtaining the prior approval of the Holders of at least a Majority in Liquidation Amount of the Preferred HITS and the Treasury HITS then Outstanding, considered together as a single Class. Additionally, in addition to and notwithstanding the foregoing, the Trustees shall not consent to any amendment to the Certificate of Designations or the Sponsor's certificate of incorporation that would change the dates on which dividends are payable on the Preferred Stock or the amount of such dividends, without the prior written consent of each Holder of Preferred HITS and Treasury HITS. In addition to obtaining the foregoing approvals of the Holders of Preferred HITS and Treasury HITS, prior to taking any of the foregoing actions, the Regular Trustees shall, at the expense of Sponsor, obtain an Opinion of Counsel experienced in such matters to the effect that such action shall not cause the Trust to be classified as an association or a publicly traded partnership taxable as a corporation for U.S. federal income tax purposes.

(e) If any proposed amendment to or modification of the Declaration, the Stock Purchase Contract Agreement or the Collateral Agreement provides for, or the Trustees otherwise propose to effect, any action that would adversely affect in any material respect the powers, preferences or special rights of the HITS of any Class in a manner that is different from the manner in which it would affect the HITS of other Classes, whether by way of amendment to or modification of the Declaration, the Stock Purchase Contract Agreement or the Collateral Agreement or otherwise, then the Holders of the Outstanding HITS of such 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 the Holders of at least a Majority in Liquidation Amount of the HITS of such Class.

(f) No amendment to or modification of any Transaction Document that adversely affects the rights, duties or immunities of the Securities Registrar, the Paying Agent, the Collateral Agent, the Securities Intermediary or the Custodial Agent shall be effective as against any such affected party without its consent.

Section 6.2 *Notice of Meetings.*

Notice of all meetings of the Holders of the HITS of any one or more Classes, stating the time, place and purpose of the meeting, shall be given by the Property Trustee pursuant to Section 12.8 to each

Holder of HITS of each Class entitled to attend such meeting, at such Holder's registered address, at least 15 days and not more than 90 days before the meeting. At any such meeting, any business properly before the meeting may be so considered whether or not stated in the notice of the meeting. Any adjourned meeting may be held as adjourned without further notice.

Section 6.3 *Meetings of Holders of the HITS.*

No annual meeting of Holders is required to be held. However, the Property Trustee or the Regular Trustees shall call a meeting of the Holders of the HITS of a Class to vote on any matter upon the written request of the Holders of at least 25% in aggregate Liquidation Amount of the Outstanding HITS of such Class; the Property Trustee or the Regular Trustees shall call a meeting of the Holders of the HITS of all Classes to vote on any matter upon the written request of the Holders of at least 25% in aggregate Liquidation Amount of the Outstanding HITS of all Classes, considered together; and the Regular Trustees or the Property Trustee may, at any time in their discretion, call a meeting of the Holders of the HITS of any Class or Classes to vote on any matters as to which such Holders are entitled to vote.

The Holders of at least a Majority in Liquidation Amount of the HITS of the Class or Classes (as applicable) entitled to attend a meeting, present in person or by proxy, shall constitute a quorum at any meeting of the Holders of the HITS.

If a quorum is present at a meeting, an affirmative vote by the Holders present, in person or by proxy, holding HITS representing at least a Majority in Liquidation Amount of the HITS of the Class or Classes (as applicable) entitled to attend such meeting held by the Holders present, either in person or by proxy, at such meeting shall constitute the action of the Holders of the HITS of the Class or Classes (as applicable) invited to attend such meeting, unless this Declaration requires a greater number of affirmative votes.

Section 6.4 *Voting Rights.*

Holders shall be entitled to one vote for each $1,000 of Liquidation Amount represented by their Outstanding Trust Securities in respect of any matter as to which such Holders are entitled to vote.

Section 6.5 *All Votes Must Be Made by a United States Person.*

Voting and consensual rights available to or in favor of Holders or Owners under this Declaration may be exercised only by a United States Person that is a beneficial owner of a Trust Security or by a United States Person acting as irrevocable agent with discretionary powers for the beneficial owner of a Trust Security that is not a United States Person. Holders that are not United States Persons must irrevocably appoint a United States Person with discretionary powers to act as their agent with respect to such voting and consensual rights.

Section 6.6 *Proxies, Etc.*

At any meeting of Holders, any Holder entitled to vote thereat may vote by proxy, *provided* that no proxy shall be voted at any meeting unless it shall have been placed on file with the Property Trustee, or with such other officer or agent of the Trust as the Property Trustee may direct, for verification prior to the time at which such vote shall be taken. Pursuant to a resolution of the Property Trustee, proxies may be solicited in the name of the Property Trustee or one or more officers of the Property Trustee. Only Holders of record shall be entitled to vote. When Trust Securities are held jointly by several Persons, any one of them may vote at any meeting in person or by proxy in respect of such Trust Securities, but if more

than one of them shall be present at such meeting in person or by proxy, and such joint owners or their proxies so present disagree as to any vote to be cast, such vote shall not be received in respect of such Trust Securities. A proxy purporting to be executed by or on behalf of a Holder shall be deemed valid unless challenged at or prior to its exercise, and the burden of proving invalidity shall rest on the challenger. No proxy shall be valid more than three years after its date of execution.

Section 6.7 *Holder Action by Written Consent.*

Any action that may be taken by Holders at a meeting may be taken without a meeting and without prior notice if Holders holding at least a Majority in Liquidation Amount of all HITS entitled to vote in respect of such action (or such larger proportion thereof as shall be required by any other provision of this Declaration) shall consent to the action in writing.

Section 6.8 *Record Date for Voting and Other Purposes.*

For the purposes of determining the Holders who are entitled to notice of and to vote at any meeting or by written consent, or to participate in any distribution on the Trust Securities in respect of which a record date is not otherwise provided for in this Declaration, or for the purpose of any other action, the Regular Trustees may from time to time fix a date, not more than 90 days prior to the date of any meeting of Holders or the payment of a Distribution or other action, as the case may be, as a record date for the determination of the identity of the Holders of record for such purposes. The Regular Trustees shall cause a notice of any such date fixed in respect of any such distribution to be forwarded to each Paying Agent.

Section 6.9 *Acts of Holders.*

Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Declaration to be given, made or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as otherwise expressly provided herein, such action shall become effective when such instrument or instruments are delivered to the Property Trustee and the Regular Trustees. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "*Act*" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Declaration and (subject to Section 8.1) conclusive in favor of the Trustees, if made in the manner provided in this Section.

The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that any Trustee receiving the same deems sufficient.

The ownership of Trust Securities shall be proved by the Securities Register.

Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Trust Security shall bind every future Holder of the same Trust Security and the Holder of every Trust Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustees, or the Trust in reliance thereon, whether or not notation of such action is made upon such Trust Security.

Without limiting the foregoing, a Holder entitled hereunder to take any action hereunder with regard to any particular Trust Security may do so with regard to all or any part of the Liquidation Amount of such Trust Security or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any part of such Liquidation Amount.

If any dispute shall arise between the Holders and the Trustees or among the Holders or the Trustees with respect to the authenticity, validity or binding nature of any request, demand, authorization, direction, consent, waiver or other Act of such Holder or Trustee under this Article VI, then the determination of such matter by the Property Trustee shall be conclusive with respect to such matter.

Section 6.10 *Inspection of Records.*

Upon reasonable notice to the Regular Trustees and the Property Trustee, the records of the Trust shall be open to inspection by Holders during normal business hours for any purpose reasonably related to such Holder's interest as a Holder.

ARTICLE VII

REPRESENTATIONS AND WARRANTIES

Section 7.1 *Representations and Warranties of the Property Trustee and the Delaware Trustee.*

The Property Trustee and the Delaware Trustee, each severally on behalf of and as to itself, hereby represents and warrants for the benefit of the Sponsor and the Holders that:

(a) the Property Trustee is a banking corporation, duly organized, validly existing and in good standing under the laws of the State of New York;

(b) the Property Trustee has full corporate power, authority and legal right to execute, deliver and perform its obligations under this Declaration and has taken all Declaration necessary action to authorize the execution, delivery and performance by it of this Declaration;

(c) the Delaware Trustee is a banking corporation, duly organized, validly existing and in good standing under the laws of the State of Delaware;

(d) the Delaware Trustee has full corporate power, authority and legal right to execute, deliver and perform its obligations under this Declaration and has taken all necessary action to authorize the execution, delivery and performance by it of this Declaration (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein);

(e) this Declaration has been duly authorized, executed and delivered by the Property Trustee and the Delaware Trustee and constitutes the valid and legally binding agreement of each of the Property Trustee and the Delaware Trustee enforceable against each of them in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles;

(f) the execution, delivery and performance of this Declaration have been duly authorized by all necessary corporate or other action on the part of the Property Trustee and the Delaware Trustee and do not require any approval of stockholders of the Property Trustee and the Delaware Trustee and such execution, delivery and performance will not (i) violate the charter or by-laws of the Property Trustee or the Delaware Trustee, (ii) violate any provision of, or constitute, with or without notice or lapse of time, a default under, or result in the creation or imposition of, any Lien on any properties included in the Trust Property pursuant to the provisions of, any indenture, mortgage, credit agreement, license or other agreement or instrument to which the Property Trustee or the Delaware Trustee is a party or by which it is bound (other than a Lien on the Trust Property pursuant to the Collateral Agreement), or (iii) violate any law, governmental rule or regulation of the State of Delaware, governing the banking or trust powers of the Property Trustee or the Delaware Trustee (as appropriate in context) or any order, judgment or decree applicable to the Property Trustee or the Delaware Trustee;

(g) neither the authorization, execution or delivery by the Property Trustee or the Delaware Trustee of this Declaration nor the consummation of any of the transactions by the Property Trustee or the Delaware Trustee (as the case may be) contemplated herein requires the consent or approval of, the giving of notice to, the registration with or the taking of any other action with respect to any governmental authority or agency under any existing law of the State of Delaware, governing the banking, trust or general powers of the Property Trustee or the Delaware Trustee (as appropriate in context), other than the filing of the Certificate of Trust with the Delaware Secretary of State; and

(h) there are no proceedings pending or, to the best of each of the Property Trustee's and the Delaware Trustee's knowledge, threatened against or affecting the Property Trustee or the Delaware Trustee in any court or before any governmental authority, agency or arbitration board or tribunal that, individually or in the aggregate, would materially and adversely affect the Trust or would question the right, power and authority of the Property Trustee or the Delaware Trustee, as the case may be, to enter into or perform its obligations as one of the Trustees under this Declaration.

Section 7.2 *Representations and Warranties of Sponsor.*

The Sponsor hereby represents and warrants for the benefit of the Holders that:

(a) the Trust Securities Certificates issued at the Time of Delivery on behalf of the Trust have been duly authorized and will have been duly and validly executed, issued and delivered by the Trustees pursuant to the terms and provisions of, and in accordance with the requirements of, this Declaration, and the Holders will be, as of such date, entitled to the benefits of this Declaration; and

(b) there are no taxes, fees or other governmental charges payable by the Trust (or the Trustees on behalf of the Trust) under the laws of the State of Delaware or any political subdivision thereof in connection with the execution, delivery and performance by any Trustee of this Declaration.

ARTICLE VIII

THE TRUSTEES

Section 8.1 *Certain Duties and Responsibilities.*

(a) The duties and responsibilities of the Trustees shall be as provided by this Declaration, subject to Section 12.10. Notwithstanding the foregoing, no provision of this Declaration shall require any of the Trustees to expend or risk its or their own funds or otherwise incur any financial liability in the performance of any of its or their duties hereunder, or in the exercise of any of its or their rights or

powers, if it or they shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. Whether or not therein expressly so provided, every provision of this Declaration relating to the conduct or affecting the liability of or affording protection to the Trustees shall be subject to the provisions of this Section 8.1. To the extent that, at law or in equity, a Trustee has duties and liabilities relating to the Trust or to the Holders, such Trustee shall not be liable to the Trust or to any Holder for such Trustee's good faith reliance on the provisions of this Declaration. Except as otherwise required by the Trust Indenture Act and the Commission's rules thereunder applicable to indentures qualified under such Act, the provisions of this Declaration, to the extent that they restrict the duties and liabilities of the Trustees otherwise existing at law or in equity, are agreed by the Sponsor and the Holders to replace such other duties and liabilities of the Trustees.

(b) All payments made by the Property Trustee or a Paying Agent in respect of the Trust Securities shall be made only from the revenue and proceeds from the Trust Property and only to the extent that there shall be sufficient revenue or proceeds from the Trust Property to enable the Property Trustee or a Paying Agent to make payments in accordance with the terms hereof. Each Holder, by its acceptance of a Trust Security, agrees that it will look solely to the revenue and proceeds from the Trust Property to the extent legally available for distribution to it as herein provided and that the Trustees are not personally liable to such Holder for any amount distributable in respect of any Trust Security or for any other liability in respect of any Trust Security. This Section 8.1(b) does not limit the liability of the Trustees expressly set forth elsewhere in this Declaration or, in the case of the Property Trustee, in the Trust Indenture Act.

(c) If an Event of Default has occurred and is continuing, the Property Trustee shall enforce this Declaration and the Transaction Agreements for the benefit of the Holders.

(d) 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 (including pursuant to Section 12.10), and no implied covenants shall be read into this Declaration against the Property Trustee. If an Event of Default has occurred (that has not been cured or waived pursuant to Section 5.07 of the Base Indenture), 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 its exercise thereof, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(e) 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 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 Property Trustee shall be determined solely by the express provisions of this Declaration (including pursuant to Section 12.10), 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 (including pursuant to Section 12.10); 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 or of the Trust Indenture Act 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 an authorized 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 at least a Majority in Liquidation Amount of the HITS of all Affected Classes considered together as a single Class, 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) the Property Trustee's sole duty with respect to the custody, safekeeping and physical preservation of the Notes, the Stock Purchase Contracts, the Preferred Stock and the Payment 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;

(v) the Property Trustee shall not be liable for any interest on any money received by it except as it may otherwise agree with the Sponsor; and money held by the Property Trustee need not be segregated from other funds held by it except in relation to the Payment Account maintained by the Property Trustee pursuant to Section 3.1 and except to the extent otherwise required by law;

(vi) the Property Trustee shall not be responsible for monitoring the compliance by the Regular Trustees, the Sponsor, the Collateral Agent, the Securities Registrar, the Custodial Agent, the Paying Agent, the Remarketing Agent or any other Person, with their respective duties under this Declaration or any Transaction Document, nor shall the Property Trustee be liable for the default or misconduct of any other Trustee, the Regular Trustees, the Sponsor, the Collateral Agent, the Securities Registrar, the Custodial Agent, the Paying Agent, the Remarketing Agent or any other Person; and

(vii) subject to Section 8.1(c), 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 the Property 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 Declaration or adequate indemnity against such risk or liability is not reasonably assured to it.

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

Section 8.2 *Certain Notices.*

Within thirty days after the occurrence of any Event of Default actually known to the Property Trustee or the Regular Trustees, the Property Trustee or the Regular Trustees shall transmit, in the manner and to the extent provided in Section 12.8, notice of such Event of Default to the Holders of each Affected Class, unless such Event of Default shall have been cured or waived.

For so long as Notes are included within the Trust Property, within five Business Days after the receipt of notice of the Sponsor's exercise of its right to defer the payment of interest on the Notes pursuant to the Indenture, the Property Trustee or the Regular Trustees shall transmit, in the manner and to the extent provided in Section 12.8, notice of such exercise to the Holders of the Preferred HITS and the Corporate HITS, unless such exercise shall have been revoked.

If during any calendar year any original issue discount shall have accrued on the Notes, the Sponsor shall file with each Paying Agent promptly at the end of such calendar year (i) a written notice specifying the amount of original issue discount (including daily rates and accrual periods) accrued on outstanding Notes as of the end of such year and (ii) such other specific information relating to such original issue discount as may then be relevant under the Internal Revenue Code of 1986, as amended from time to time.

For so long as Stock Purchase Contracts are included within the Trust Property, within five Business Days after the receipt of notice of the Sponsor's exercise of its right to defer Contract Payments, the Property Trustee or the Regular Trustees shall transmit, in the manner and to the extent provided in Section 12.8, notice of such exercise to the Holders of the Preferred HITS and the Treasury HITS, unless such exercise shall have been revoked.

For so long as shares of Preferred Stock are included within the Trust Property, within five Business Days after the receipt of notice of the Sponsor's determination not to pay dividends on a dividend payment date, the Property Trustee shall transmit, in the manner and to the extent provided in Section 12.8, notice of such decision to the Holders of the Preferred HITS and Treasury HITS, unless such notice shall have been revoked.

The Property Trustee shall not be deemed to have knowledge of any Event of Default unless the Property Trustee shall have received written notice or a Responsible Officer of the Property Trustee charged with the administration of this Declaration shall have obtained actual knowledge of such Event of Default.

Section 8.3 *Certain Rights of Property Trustee.*

Subject to the provisions of Section 8.1:

(a) the Property Trustee may conclusively rely and shall be protected in acting or refraining from acting in good faith upon any resolution, Opinion of Counsel, certificate, written representation of a Holder or transferee, certificate of auditors or any other certificate, statement, instrument, opinion, report, notice, request, consent, order, appraisal, bond, debenture, note, other evidence of indebtedness 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) if (i) in performing its duties under this Declaration the Property Trustee is required to decide between alternative courses of action, (ii) in construing any of the provisions of this Declaration the Property Trustee finds the same ambiguous or inconsistent with any other provisions contained herein, or (iii) the Property Trustee is unsure of the application of any provision of this Declaration, then, except as to any matter as to which the Holders of the HITS are entitled to vote under the terms of this Declaration, the Property Trustee shall deliver a notice to the Sponsor requesting the Sponsor's opinion as to the course of action to be taken; *provided*, *however*, that if the Sponsor fails to deliver such opinion, the Property Trustee may take such action, or refrain from taking such action, as the Property Trustee shall deem advisable and in the interests of the Holders, in which event the Property Trustee shall have no liability except for its own bad faith, negligence or willful misconduct;

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

(d) any direction or act of a Regular Trustee contemplated by this Declaration shall be sufficiently evidenced by a certificate executed by such Regular Trustee and setting forth such direction or act;

(e) 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 re-registration thereof;

(f) the Property Trustee may consult with counsel of its own selection (which counsel may be counsel to the Sponsor or any of its Affiliates, and may include any of its employees) and the advice of such counsel 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 reliance thereon and in accordance with such advice; 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;

(g) 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 of the Holders pursuant to this Declaration, unless such Holders shall have offered to the Property Trustee reasonable security or indemnity satisfactory to it against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction; *provided* that nothing contained in this Section 8.3(g) 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;

(h) 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, consent, order, approval, bond, debenture, note or other evidence of indebtedness or other paper or document, unless requested in writing to do so by one or more Holders, but the Property Trustee may make such further inquiry or investigation into such facts or matters as it may see fit at the expense of the Sponsor and shall incur no liability of any kind by reason of such inquiry or investigation;

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

(j) 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 (which instructions may only be given by the Holders of the same proportion in Liquidation Amount of the Trust Securities as would be entitled to direct the Property Trustee under the terms of the Trust 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 acting in accordance with such instructions;

(k) 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. No provision of this Declaration shall be deemed to impose any duty or obligation on any 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 such Person 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 any Trustee shall be construed to be a duty;

(l) 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 the Indenture;

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

(n) the rights, privileges, protections, immunities and benefits given to the Property Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Property Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

Section 8.4 *Not Responsible for Recitals or Issuance of Securities.*

The recitals contained herein and in the Trust Securities Certificates shall be taken as the statements of the Trust and the Sponsor, and the Trustees do not assume any responsibility for their correctness. The Trustees shall not be accountable for the use or application by the Sponsor of the proceeds of the Notes.

Section 8.5 *May Hold Securities.*

Any Trustee or any other agent of any Trustee or the Trust, in its individual or any other capacity, may become the owner or pledgee of Trust Securities and, subject to Sections 8.8 and 8.13, may otherwise deal with the Trust with the same rights it would have if it were not Trustee or such other agent.

Section 8.6 *Compensation; Indemnity; Fees.*

The Sponsor agrees:

(a) to pay to the Trustees from time to time such reasonable compensation for all services rendered by them hereunder as may be separately agreed by the Sponsor and the Trustees from time to time (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(b) except as otherwise expressly provided herein, to reimburse the Trustees upon request for all reasonable expenses, disbursements and advances incurred or made by the Trustees in accordance with any provision of this Declaration (including the reasonable compensation and the expenses and disbursements of their agents and counsel), except any such expense, disbursement or advance as shall be determined to have been caused by their own negligence, bad faith or willful misconduct; and

(c) to the fullest extent permitted by applicable law, to indemnify and hold harmless (i) each Trustee, (ii) any Affiliate of any Trustee, (iii) any officer, director, shareholder, employee, representative or agent of any Trustee, and (iv) any employee or agent of the Trust (referred to herein as an "*Indemnified Person*") from and against any loss, damage, liability, action, suit, tax, penalty, expense or claim of any kind or nature whatsoever incurred by such Indemnified Person by reason of the creation, operation or

dissolution of the Trust or 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 authority conferred on such Indemnified Person by this Declaration, except that no Indemnified Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Indemnified Person by reason of negligence, bad faith or willful misconduct with respect to such acts or omissions.

The provisions of this Section 8.6 shall survive the termination of this Declaration and the removal or resignation of any Trustee. No Trustee may claim any Lien on any Trust Property as a result of any amount due pursuant to this Section 8.6.

Notwithstanding any provision of law or equity, the Sponsor and any 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 Trust 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. Notwithstanding any provision of law or equity, neither the Sponsor nor any 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 the Sponsor and any 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. Notwithstanding any provision of law or equity, any 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.

Section 8.7 *Corporate Property Trustee Required; Eligibility of Trustees and Regular Trustees.*

(a) There shall at all times be a Property Trustee hereunder with respect to the Trust Securities. The Property Trustee shall be a Person that is a national or state chartered bank and eligible pursuant to the Trust Indenture Act to act as such and that has a combined capital and surplus of at least $50,000,000. If any such Person publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, then for the purposes of this Section 8.7 and to the extent permitted by the Trust Indenture Act, the combined capital and surplus of such Person 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 the Property Trustee with respect to the Trust Securities shall cease to be eligible in accordance with the provisions of this Section 8.7, it shall resign immediately in the manner and with the effect hereinafter specified in this Article VIII. At the time of appointment, the Property Trustee must have securities rated in one of the three highest rating categories by a nationally recognized statistical rating organization.

(b) There shall at all times be one or more Regular Trustees hereunder with respect to the Trust Securities. Each Regular Trustee shall be either a natural person who is at least 21 years of age or a legal entity that shall act through one or more persons authorized to bind that entity.

(c) There shall at all times be a Delaware Trustee. The Delaware Trustee shall either be (i) a natural person who is at least 21 years of age and a resident of the State of Delaware, or (ii) a legal entity with its principal place of business in the State of Delaware and that otherwise meets the requirements of applicable Delaware law and that shall act through one or more persons authorized to bind such entity.

Section 8.8 *Conflicting Interests.*

(a) If the Property Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Property Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Declaration.

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

Section 8.9 *Co-Trustees and Separate Trustee.*

Unless and until a Note Event of Default shall have occurred and be continuing, at any time or times, for the purpose of meeting the legal requirements of the Trust Indenture Act or of any jurisdiction in which any part of the Trust Property may at the time be located, the Holder of Common Securities and the Regular Trustees shall have the power to appoint one or more Persons either to act as co-trustee, jointly with the Property Trustee, of all or any part of such Trust Property, or to the extent required by law to act as separate trustee of any such property, in either case with such powers as may be provided in the instrument of appointment, and to vest in such Person or Persons in the capacity aforesaid, any property, title, right or power deemed necessary or desirable, subject to the other provisions of this Section. If a Note Event of Default shall have occurred and be continuing, the Property Trustee shall have the sole power to so appoint such a co-trustee or separate trustee, and upon the written request of the Property Trustee, the Sponsor, and the Regular Trustees shall for such purpose join with the Property Trustee in the execution, delivery, and performance of all instruments and agreements necessary or proper to appoint, such co-trustee or separate trustee. Any co-trustee or separate trustee appointed pursuant to this Section shall either be (i) a natural person who is at least 21 years of age and a resident of the United States, or (ii) a legal entity with its principal place of business in the United States that shall act through one or more persons authorized to bind such entity.

Should any written instrument from the Sponsor be required by any co-trustee or separate trustee so appointed for more fully confirming to such co-trustee or separate trustee such property, title, right, or power, any and all such instruments shall, on request, be executed, acknowledged and delivered by the Sponsor.

Every co-trustee or separate trustee shall, to the extent permitted by law, but to such extent only, be appointed subject to the following terms, namely:

(a) The Trust Securities shall be executed by one or more Regular Trustees, and the Trust Securities shall be delivered by the Property Trustee or a Regular Trustee on behalf of the Property Trustee, and all rights, powers, duties, and obligations hereunder in respect of the custody of securities, cash and other personal property held by, or required to be deposited or pledged with, the Property Trustee specified hereunder shall be exercised solely by the Property Trustee and not by such co-trustee or separate trustee.

(b) The rights, powers, duties, and obligations hereby conferred or imposed upon the Property Trustee in respect of any property covered by such appointment shall be conferred or imposed upon and exercised or performed by the Property Trustee or by the Property Trustee and such co-trustee or separate trustee jointly, as shall be provided in the instrument appointing such co-trustee or separate trustee, except to the extent that under any law of any jurisdiction in which any particular act is to be performed, the Property Trustee shall be incompetent or unqualified to perform such act, in which event such rights, powers, duties and obligations shall be exercised and performed by such co-trustee or separate trustee.

(c) The Property Trustee at any time, by an instrument in writing executed by it, with the written concurrence of the Sponsor, may accept the resignation of or remove any co-trustee or separate trustee appointed under this Section 8.9, and, in case a Note Event of Default has occurred and is continuing, the Property Trustee shall have power to accept the resignation of, or remove, any such co-trustee or separate trustee without the concurrence of the Sponsor. Upon the written request of the Property Trustee, the Sponsor shall join with the Property Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co-trustee or separate trustee so resigning or removed may be appointed in the manner provided in this Section 8.9.

No co-trustee or separate trustee hereunder shall be personally liable by reason of any act or omission of the Property Trustee or any other trustee hereunder.

(d) The Property Trustee shall not be liable by reason of any act of a co-trustee or separate trustee.

(e) Any Act of Holders delivered to the Property Trustee shall be deemed to have been delivered to each such co-trustee and separate trustee.

Section 8.10 *Resignation and Removal; Appointment of Successor.*

No resignation or removal of any Trustee (the "*Relevant Trustee*") and no appointment of a successor Trustee pursuant to this Article VIII shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 8.11.

Subject to the immediately preceding paragraph, the Relevant Trustee may resign at any time by giving written notice thereof to the Holders. The Corporation shall appoint a successor by requesting from at least three Persons meeting the eligibility requirements its expenses and charges to serve as the Relevant Trustee on a form provided by the Regular Trustees, and selecting the Person who agrees to the lowest expenses and charges. If the instrument of acceptance by the successor Trustee required by Section 8.11 shall not have been delivered to the Relevant Trustee within 60 days after the giving of such notice of resignation, the Relevant Trustee may petition, at the expense of the Sponsor, in the case of the Property Trustee, any court of competent jurisdiction for the appointment of a successor Relevant Trustee.

The Regular Trustees, or any of them, may be removed at any time by Act of the Holders of Common Securities delivered to the Relevant Trustee.

The Property Trustee or the Delaware Trustee, or both of them, may be removed by Act of the Holders of at least a Majority in Liquidation Amount of the HITS, delivered to the Relevant Trustee (in its individual capacity and, in the case of the Property Trustee, on behalf of the Trust) (i) for cause (including upon the occurrence of an Event of Default described in subparagraph (d) of the definition thereof with respect to the Relevant Trustee), or (ii) at any time if a Note Event of Default shall have occurred and be continuing. Unless and until a Note Event of Default shall have occurred and be continuing, the Property Trustee or the Delaware Trustee, or both of them, may be removed at any time by Act of the Holders of the Common Securities.

If a resigning Property Trustee or Delaware Trustee shall fail to appoint a successor, or if the Property Trustee or the Delaware Trustee shall be removed or become incapable of acting as Trustee, or if

a vacancy shall occur in the office of the Property Trustee or the Delaware Trustee for any cause, the Holders of the Common Securities by Act of such Holders delivered to the Relevant Trustee or, if a Note Event of Default shall have occurred and be continuing, the Holders of the HITS, by Act of the Holders of not less than 25% in aggregate Liquidation Amount of the HITS then Outstanding delivered to such Relevant Trustee, may appoint a successor Relevant Trustee or Trustees, and such successor Trustee shall comply with the applicable requirements of Section 8.11. If no successor Relevant Trustee shall have been so appointed by the Holders of the Common Securities or HITS, as the case may be, and accepted appointment in the manner required by Section 8.11, any Holder, on behalf of such Holder and all others similarly situated, or any other Trustee, may petition any court of competent jurisdiction for the appointment of a successor Relevant Trustee.

The Property Trustee shall give notice of each resignation and each removal of a Trustee and each appointment of a successor Trustee to all Holders in the manner provided in Section 12.8 and shall give notice to the Sponsor and to the Regular Trustees. Each notice shall include the name of the successor Relevant Trustee and the address of its Corporate Trust Office if it is the Property Trustee.

Notwithstanding the foregoing or any other provision of this Declaration, if any Delaware Trustee who is a natural person dies or becomes, in the opinion of the Holders of the Common Securities, incompetent or incapacitated, the vacancy created by such death, incompetence or incapacity may be filled by the Property Trustee following the procedures regarding expenses and charges set forth above (with the successor being a Person who satisfies the eligibility requirement for the Delaware Trustee set forth in Section 8.7).

Section 8.11 *Acceptance of Appointment by Successor.*

In case of the appointment hereunder of a successor Relevant Trustee, the retiring Relevant Trustee (if requested by the Sponsor) and each successor Relevant Trustee with respect to the Trust Securities shall execute and deliver an amendment hereto wherein each successor Relevant Trustee shall accept such appointment and which (a) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Relevant Trustee all the rights, powers, trusts and duties of the retiring Relevant Trustee with respect to the Trust Securities and the Trust, and (b) shall add to or change any of the provisions of this Declaration as shall be necessary to provide for or facilitate the administration of the Trust by more than one Relevant Trustee, it being understood that nothing herein or in such amendment shall constitute such Relevant Trustees co-trustees and upon the execution and delivery of such amendment the resignation or removal of the retiring Relevant Trustee shall become effective to the extent provided therein and each such successor Relevant Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Relevant Trustee, other than the filing of an amendment to the Certificate of Trust to the extent required under the Delaware Statutory Trust Act; but, on request of the Trust or any successor Relevant Trustee such retiring Relevant Trustee shall duly assign, transfer and deliver to such successor Relevant Trustee all Trust Property, all proceeds thereof and money held by such retiring Relevant Trustee hereunder with respect to the Trust Securities and the Trust.

Upon request of any such successor Relevant Trustee, the Trust shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Relevant Trustee all such rights, powers and trusts referred to in the preceding paragraph.

No successor Relevant Trustee shall accept its appointment unless at the time of such acceptance such successor Relevant Trustee shall be qualified and eligible under this Article VIII.

Section 8.12 *Merger, Conversion, Consolidation or Succession to Business.*

Any Person into which the Property Trustee or the Delaware Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which such Relevant Trustee shall be a party, or any Person, succeeding to all or substantially all the corporate trust business of such Relevant Trustee, shall be the successor of such Relevant Trustee hereunder, *provided* that such Person shall be otherwise qualified and eligible under this Article VIII, without the execution or filing of any paper or any further act on the part of any of the parties hereto, other than the filing of an amendment to the Certificate of Trust to the extent required under the Delaware Statutory Trust Act.

Section 8.13 *Preferential Collection of Claims Against Sponsor or Trust.*

If and when the Property Trustee shall be or become a creditor of the Sponsor or the Trust (or any other obligor upon the HITS), the Property Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Sponsor or the Trust (or any such other obligor).

Section 8.14 *Property Trustee May File Proofs of Claim.*

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

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

(b) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Property Trustee and, in the event the Property Trustee shall consent to the making of such payments directly to the Holders, to pay to the Property Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Property Trustee, its agents and counsel, and any other amounts due the Property Trustee.

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

Section 8.15 *Reports by Property Trustee.*

(a) The Property Trustee shall transmit to Holders such reports concerning the Property Trustee and its actions under this Declaration 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 Property Trustee shall, within sixty days after each May 15 following the date of the initial issuance of Trust Securities under the Declaration deliver to Holders a brief report, dated as of such May 15, 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 Holders, be filed by the Property Trustee with each stock exchange, if any, upon which the Trust Securities are listed, with the Commission and with the Sponsor. The Sponsor will promptly notify the Property Trustee in writing when the Securities are listed on any stock exchange and of any delisting thereof.

Section 8.16 *Reports to the Property Trustee.*

Each of the Sponsor and the Regular Trustees shall provide to the Property Trustee such documents, reports and information as required by Section 314 of the Trust Indenture Act (if any) and the compliance certificate required by Section 314(a) of the Trust Indenture Act in the form, in the manner and at the times required by Section 314 of the Trust Indenture Act. The Sponsor and the Regular Trustees shall annually file with the Property Trustee a certificate specifying whether such Person is in compliance with all of the terms and covenants (if any) applicable to such Person hereunder.

Section 8.17 *Evidence of Compliance with Conditions Precedent.*

Each of the Sponsor and the Regular Trustees 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) of the Trust Indenture Act shall be given in the form of an Officers' Certificate.

Section 8.18 *Number of Trustees.*

(a) The number of Trustees shall be five, unless the Property Trustee also acts as the Delaware Trustee, in which case the number of Trustees may be four.

(b) If a Trustee ceases to hold office for any reason, a vacancy shall occur. The vacancy shall be filled with a Trustee appointed in accordance with Section 8.10.

(c) The death, resignation, retirement, removal, bankruptcy, incompetence or incapacity to perform the duties of a Trustee shall not operate to annul, terminate or dissolve the Trust.

Section 8.19 *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 2.7(a) or making any governmental filing.

(b) The Regular Trustees shall have power to delegate from time to time to such of their number 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 not prohibited by applicable law or contrary to the provisions of this Declaration.

ARTICLE IX

DISSOLUTION, LIQUIDATION AND MERGER

Section 9.1 *Perpetual Existence.*

The Trust shall have perpetual existence and shall be dissolved only in accordance with this Article IX.

Section 9.2 *Early Dissolution.*

The first to occur of any of the following events is an "*Early Dissolution Event*":

(a) the occurrence of a Bankruptcy Event in respect of, or the dissolution or liquidation of, the Sponsor, unless the Common Securities shall be transferred as provided by Section 5.10, in which case this provision shall refer instead to any such successor Holder of the Common Securities;

(b) upon filing of a certificate of dissolution or its equivalent with respect to the Sponsor;

(c) 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;

(d) upon the revocation of the Sponsor's charter and the expiration of 90 days after the date of revocation without a reinstatement thereof;

(e) at the Sponsor's election at any time pursuant to which the Trust shall have been dissolved in accordance with the terms of the Trust Securities and upon the distribution of the assets of the Trust corresponding to its securities to the holders of the Trust Securities;

(f) the redemption of all of the HITS in accordance with the provisions of this Declaration; and

(g) the entry of an order for dissolution of the Trust by a court of competent jurisdiction.

If an Early Dissolution Event occurs, Section 9.4 shall apply.

Section 9.3 *Dissolution.*

Upon the occurrence of any Early Dissolution Event, the Trust shall dissolve and the Property Trustee and the Regular Trustees shall wind up the affairs of the Trust in accordance with Section 9.4 hereof and Section 3808 of the Delaware Statutory Trust Act. The respective obligations and responsibilities of the Trustees, the Regular Trustees and the Trust created and continued hereby shall terminate upon the latest to occur of the following: (a) the distribution by the Property Trustee to Holders of all amounts required to be distributed hereunder upon the liquidation of the Trust pursuant to Section 9.4, or upon the redemption of all of the Trust Securities pursuant to Section 4.2; (b) the payment of any expenses owed by the Trust; and (c) the discharge of all administrative duties of the Regular Trustees, including the performance of any tax reporting obligations with respect to the Trust or the Holders. Upon completion of winding up, the Regular Trustees shall file a certificate of cancellation with the Secretary of State of the State of Delaware.

Section 9.4 *Liquidation.*

(a) If an Early Dissolution Event specified in clause (a) of Section 9.2 occurs, the Trust shall be liquidated by the Property Trustee and the Regular Trustees as expeditiously as the Property Trustee and the Regular Trustees determine to be possible by distributing, after satisfaction of liabilities to creditors of the Trust as provided by applicable law, to each Holder of HITS of each Class a Like Amount of Corresponding Assets as of the date of such distribution, subject to Section 9.4(d). If an Early Dissolution Event specified in clause (c) of Section 9.2 occurs, because such Early Dissolution Event is also an Early Settlement Event, unless otherwise required by applicable law the Trust will not be liquidated until after the Stock Purchase Date but, commencing promptly after the Stock Purchase Date, the Trust shall be liquidated by the Property Trustee and the Regular Trustees as expeditiously as the Property Trustee and the Regular Trustees determine to be possible by distributing, after satisfaction of liabilities to creditors of the Trust as provided by applicable law, to each Holder of HITS of each Class a Like Amount of Corresponding Assets as of the date of such distribution, subject to Section 9.4(d). Notice of liquidation shall be given by the Property Trustee or the Regular Trustees by first-class mail, postage prepaid, mailed not less than 15 nor more than 60 days prior to the Liquidation Date to each Holder of HITS of each Class at such Holder's address appearing in the Securities Register. All such notices of liquidation shall:

(i) state the CUSIP Number of the Trust Securities of each Class;

(ii) state the Liquidation Date;

(iii) state that from and after the Liquidation Date, the Trust Securities of such Class will no longer be deemed to be Outstanding and any Trust Securities Certificates not surrendered for exchange will be deemed to represent a Like Amount of Corresponding Assets as of the date of such distribution, or if Section 9.4(d) applies, a right to receive a Liquidation Distribution; and

(iv) provide such information with respect to the mechanics by which Holders may exchange Trust Securities Certificates of such Class for Corresponding Assets, or if Section 9.4(d) applies, receive a Liquidation Distribution, as the Property Trustee (after consultation with the Regular Trustees) shall deem appropriate.

(b) Except where Section 9.2(e) or 9.4(d) applies, in order to effect the liquidation of the Trust and distribution of the Corresponding Assets to Holders, the Property Trustee, either itself acting as exchange agent or through the appointment of a separate exchange agent, shall establish a record date for such distribution (which shall be not more than 30 days prior to the Liquidation Date) and, establish such procedures as it shall deem appropriate to effect the distribution of Corresponding Assets in exchange for the Outstanding Trust Securities Certificates of the related Classes.

(c) Except where Section 9.2(e) or 9.4(d) applies, after the Liquidation Date, (i) the Trust Securities will no longer be deemed to be Outstanding, (ii) if the Corresponding Assets for a Class of HITS are Notes or shares of Preferred Stock, certificates representing a Like Amount of Notes or Preferred Stock (or fractional interests in or depositary shares for Preferred Stock) will be issued to Holders of Trust Securities Certificates of the relevant Classes, upon surrender of such certificates to the exchange agent for exchange, and where Pledged Treasury Securities are Corresponding Assets, Pledged Treasury Securities will be delivered by Book-Entry Transfer to Holders upon surrender of such certificates, (iii) any Trust Securities Certificates not so surrendered for exchange will be deemed to represent a Like Amount of Corresponding Assets of the applicable Class until such certificates are so surrendered (and until such certificates are so surrendered, no payments of interest, principal, dividends, redemption price or otherwise will be made to Holders of Trust Securities Certificates with respect to such Corresponding Assets) and (iv) all rights of Holders holding Trust Securities will cease, except the right of such Holders to receive Corresponding Assets upon surrender of Trust Securities Certificates.

(d) If, notwithstanding the other provisions of this Section 9.4, whether because of an order for dissolution entered by a court of competent jurisdiction or otherwise, distribution of the Corresponding Assets in the manner provided herein is determined by the Property Trustee and the Regular Trustees not to be practical, or if an Early Dissolution Event specified in clause (e) of Section 9.2 occurs, the Trust Property shall be liquidated, and the Trust's affairs wound-up, by the Property Trustee and the Regular Trustees in such manner as the Property Trustee and the Regular Trustees determine. In such event, upon the winding-up of the Trust except with respect to an Early Dissolution Event specified in clause (e) of Section 9.2, Holders will be entitled to receive out of the assets of the Trust available for distribution to Holders, after satisfaction of liabilities to creditors of the Trust as provided by applicable law, an amount equal to the Liquidation Amount per Trust Security plus accumulated and unpaid Distributions thereon to the date of payment (such amount being the "*Liquidation Distribution*"). If, upon any such winding-up, 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, subject to the next succeeding sentence, the amounts payable by the Trust on the Trust Securities shall be paid on a *pro rata* basis (based upon Liquidation Amounts), except that the right of Holders of the Common Securities to receive Liquidation Distributions will be subordinated to the right of Holders of HITS to receive Liquidation Distributions as provided in Section 4.3(c).

Section 9.5 *Mergers, Consolidations, Amalgamations or Replacements of Trust.*

(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 9.5(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 Trust 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 Trust Securities; or

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

(ii) the Corporation 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 Trust Securities or any Successor Securities which are listed, will be listed upon notification of issuance, on any national or international securities exchange or with another organization, if any, on which such Trust Securities are then listed or quoted;

(iv) such merger, consolidation, amalgamation or replacement does not cause the Trust Securities (including any Successor Securities of the Trust 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 Trust 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 Trust 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 Guarantee Agreements.

(c) Notwithstanding Section 9.5(b), the Trust shall not, except with the consent of holders of 100% in liquidation amount of the 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 Successor Entity to be classified as other than a grantor trust for United States federal income tax purposes.

ARTICLE X

QUALIFYING TREASURY SECURITIES

Section 10.1 *Qualifying Treasury Securities.*

(a) The Regular Trustees or any one of them shall, for each March 15, June 15, September 15 and December 15, commencing on June 15, 2007 and ending on the Stock Purchase Date or the earlier termination of the Stock Purchase Contracts, or if any such day is not a Business Day, the immediately succeeding Business Day (each, a "*Reference Date*") identify:

(i) the 13-week treasury bill that matures at least one and not more than six Business Days prior to that Reference Date, or

(ii) if no 13-week treasury bill that matures at least one and not more than six Business Days prior to that Reference Date is or is scheduled to be outstanding on the immediately preceding Reference Date, the 26-week treasury bill that matures at least one and not more than six Business Days prior to that Reference Date, or

(iii) if neither of such treasury bills is or is scheduled to be outstanding on the immediately preceding Reference Date, any other treasury security (which may be a zero coupon treasury security) that is outstanding on the immediately preceding Reference Date, is highly liquid and matures at least one Business Day prior to such Reference Date; *provided* that any treasury security identified pursuant to this clause (iii) shall be selected in a manner intended to minimize the cash value of the security selected.

(b) The Regular Trustees or any one of them shall use commercially reasonable efforts to identify the security meeting the foregoing criteria for each Reference Date promptly after the Department of the Treasury makes the schedule for upcoming auctions of treasury securities publicly available and shall, to the extent that a security previously identified with respect to any Reference Date is no longer expected to be outstanding on the immediately preceding Reference Date, identify another security meeting the foregoing criteria for such Reference Date. The security most recently identified by the Regular Trustees or any one of them with respect to any Reference Date shall be the "*Qualifying Treasury Security*" with respect to the period from and including its date of issuance (or if later, the date of maturity of the Qualifying Treasury Security with respect to the immediately preceding Reference Date) to but excluding its date of maturity, and the Regular Trustees' identification of a security as a Qualifying Treasury Security for such period shall be final and binding for all purposes absent manifest error. The Regular Trustees or any one of them shall give (or cause to be given) prompt written notice to the Sponsor, the Collateral Agent, the Custodial Agent and the Property Trustee of each determination made pursuant to this Section 10.1.

ARTICLE XI

OTHER HITS RELATED PROVISIONS

Section 11.1 *Tax Treatment.*

Each Holder of HITS agrees, by acceptance of HITS, and each Owner agrees, by acceptance of a beneficial interest in HITS, to treat for all U.S. federal income tax purposes (i) the Trust as one or more grantor trusts and/or agency arrangements, (ii) itself as the owner of the Corresponding Assets for the related Class of HITS, (iii) in the case of Preferred HITS the fair market value of the $1,000 principal amount of Notes corresponding to one Preferred HITS as $1,000 and the fair market value of $^{1}/_{100}$th fractional interest in a Stock Purchase Contract corresponding to one Preferred HITS as $0 at the time of initial purchase, (iv) the Notes as indebtedness of the Sponsor, and (v) the stated interest on the Notes as ordinary interest income that is includible in the Holder's or Owner's gross income at the time the interest is paid or accrued in accordance with the Holder's or Owner's regular method of tax accounting, and otherwise to treat the Notes as described in the Prospectus.

ARTICLE XII

MISCELLANEOUS PROVISIONS

Section 12.1 *Limitation of Rights of Holders.*

Except as set forth in Section 9.2, the death, dissolution, bankruptcy or incapacity of any Person having an interest, beneficial or otherwise, in Trust Securities shall not operate to terminate this Declaration nor dissolve, terminate or annul the Trust, nor entitle the legal representatives or heirs of such person or any Holder for such Person, to claim an accounting, take any action or bring any proceeding in any court for a partition or winding up of the arrangements contemplated hereby, nor otherwise affect the rights, obligations and liabilities of the parties hereto or any of them.

Section 12.2 *Amendment.*

(a) This Declaration may be amended from time to time by the Regular Trustees and the Holders of all of the Common Securities, without the consent of any Holder of the HITS, the Property Trustee or the Delaware Trustee (i) to cure any ambiguity, correct or supplement any provision herein that may be inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Declaration, which shall not be inconsistent with the other provisions of this Declaration, (ii) to modify, eliminate or add to any provisions of this Declaration to such extent as shall be necessary to ensure that the Trust will not be taxable as a corporation or classified as a partnership for U.S. federal income tax purposes at all times that any Trust Securities are outstanding, to ensure that the Trust will not be required to register as an "investment company" under the Investment Company Act or to ensure the treatment of the HITS as Tier 1 regulatory capital under the prevailing Federal Reserve rules and regulations, (iii) to provide that HITS Certificates may be executed by a Regular Trustee by facsimile signature instead of manual signature, in which case such amendment(s) shall also provide for the appointment by the Sponsor of an authentication agent, the fees and expenses of which will be paid by the Sponsor, a form of authentication certificate, and provisions to the effect that HITS Certificates that have been executed by a Regular Trustee by facsimile signature shall not be entitled to any benefit under the Declaration or be valid or obligatory for any purpose unless the certificate of authentication thereon has been executed by the authentication agent by manual signature, or (iv) to conform the terms of this Declaration to the description of this Declaration and the Trust Securities in the Prospectus; *provided*, *however*, that in the case of either clause (i) or (ii), such action shall not adversely affect in any material respect the interests of any Holder, the Property Trustee or the Delaware Trustee; *provided*, *further*, that in the case of clause (iv), the Sponsor shall deliver to the Property Trustee an Officers' Certificate and an Opinion of Counsel (who may be counsel to the Sponsor or the Trust), in each case confirming that such amendment has the effect of conforming the terms of this Declaration to the descriptions of this Declaration and the Trust Securities in the Prospectus. Any such amendment shall become effective when notice is given to the Property Trustee and the Holders of the HITS.

(b) Except as provided in Section 12.2(c), any provision of this Declaration may be amended by the Regular Trustees and the Holders of all of the Common Securities and with (i) the consent of Holders of at least a Majority in Liquidation Amount of the Outstanding HITS of each Affected Class, and (ii) receipt by the Trustees of an Opinion of Counsel experienced in such matters to the effect that such amendment or the exercise of any power granted to the Trustees or the Regular Trustees in accordance with such amendment will not affect the Trust's status as a grantor trust or cause the Trust to be classified as an association or a publicly traded partnership taxable as a corporation for U.S. federal income tax purposes or affect the Trust's exemption from status as an "investment company" under the Investment Company Act.

(c) In addition to and notwithstanding any other provision in this Declaration, without the consent of each affected Holder, this Declaration may not be amended to (i) change the amount or timing of any Distribution on the Trust Securities or otherwise adversely affect the amount of any Distribution required to be made in respect of the Trust Securities as of a specified date, or (ii) restrict the right of a Holder to institute suit for the enforcement of any such payment on or after such date; and notwithstanding any other provision herein, without the unanimous consent of the Holders, this Section 12.2(c) may not be amended.

(d) Notwithstanding any other provisions of this Declaration, no Trustee shall enter into or consent to any amendment to this Declaration that would cause the Trust to fail or cease to qualify for the exemption from status as an "investment company" under the Investment Company Act or to be taxable as a corporation or to be classified as other than as one or more grantor trusts and/or agency arrangements for U.S. federal income tax purposes. In particular, no Trustee shall enter into or consent to any amendment to this Declaration that would cause the Trust to be classified as an association or a publicly traded partnership taxable as a corporation for U.S. federal income tax purposes.

(e) Notwithstanding anything in this Declaration to the contrary, without the consent of the Sponsor and the Regular Trustees, this Declaration may not be amended in a manner that imposes any additional obligation on the Sponsor or the Regular Trustees.

(f) Notwithstanding anything in this Declaration to the contrary, without the consent of the Property Trustee, this Declaration may not be amended in a manner that imposes any additional obligation on the Property Trustee or that adversely affects the Property Trustee.

(g) Notwithstanding anything in this Declaration to the contrary, without the consent of the Delaware Trustee, this Declaration may not be amended in a manner that imposes any additional obligation on the Delaware Trustee or that adversely affects the Delaware Trustee.

(h) Notwithstanding anything in this Declaration to the contrary, without the consent of the Securities Registrar and the Paying Agent, this Declaration may not be amended in a manner that imposes any additional obligation on the Securities Registrar or the Paying Agent or that adversely affects the Securities Registrar or the Paying Agent.

(i) In the event that any amendment to this Declaration is made, the Regular Trustees shall promptly provide to the Sponsor, the Property Trustee and the Delaware Trustee a copy of such amendment.

(j) Neither the Property Trustee nor the Delaware Trustee shall be required to enter into any amendment to this Declaration that affects its own rights, duties or immunities under this Declaration. The Property Trustee and the Delaware Trustee shall be entitled to receive an Opinion of Counsel and an Officers' Certificate stating that any amendment to this Declaration is in compliance with this Declaration.

Section 12.3 *Separability Clause.*

In case any provision in this Declaration or in the Trust Securities Certificates shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 12.4 *Governing Law.*

This Declaration and the Trust Securities shall be governed by and construed in accordance with the laws of the State of Delaware (without regard to conflicts of laws principles).

Section 12.5 *Payments Due on Non-Business Day.*

If the date fixed for any payment on any Trust Security shall be a day that is not a Business Day, then such payment need not be made on such date but may be made on the next succeeding day that is a Business Day, with the same force and effect as though made on the date fixed for such payment, and no Distributions shall accumulate on such unpaid amount for the period after such date.

Section 12.6 *Successors and Assigns.*

All covenants and agreements in this Declaration by each party hereto shall bind its successors and assigns, whether so expressed or not. Except in connection with a consolidation, merger or sale involving the Sponsor that is permitted under Article 10 of the Base Indenture and pursuant to which the assignee agrees in writing to perform the Sponsor's obligations hereunder, the Sponsor shall not assign its obligations hereunder.

Section 12.7 *Effect of Headings and Table of Contents.*

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

Section 12.8 *Reports, Notices and Demands.*

Any report, notice, demand or other communication that by any provision of this Declaration is required or permitted to be given or served to or upon any Holder, the Sponsor or the Regular Trustees may be given or served in writing by deposit thereof, first-class postage prepaid, in the United States mail, hand delivery or facsimile transmission, in each case, addressed, (a) in the case of a Holder of HITS, to such Holder as such Holder's name and address may appear on the Securities Register and (b) in the case of the Holder of the Common Securities or the Sponsor, to Bank of America Corporation, NC1-007-07-06, 100 North Tryon Street, Charlotte, North Carolina, 28255, Attention: Corporate Treasury—Securities Administration, facsimile (704) 386-0270, or to such other address as may be specified in a written notice by the Sponsor to the Property Trustee. Such notice, demand or other communication to or upon a Holder shall be deemed to have been sufficiently given or made, for all purposes, upon hand delivery, mailing or transmission. Such notice, demand or other communication to or upon the Sponsor or the Holder of the Common Securities shall be deemed to have been sufficiently given or made only upon actual receipt of the writing by the Sponsor or the Holder of the Common Securities, as the case may be. Any notice, demand or other communication that by any provision of this Declaration is required or permitted to be given or served to or upon the Trust, the Property Trustee, the Delaware Trustee, the Regular Trustees or the Trust shall be given in writing addressed to such Person as follows: (a) with respect to the Property Trustee, to The Bank of New York, 101 Barclay Street, 8 West, New York, New York 10286, facsimile: (904) 645-1921, Attention: Corporate Trust Administration, (b) with respect to the Delaware Trustee, to The Bank of New York (Delaware), 100 White Clay Center, Route 273, Newark Delaware 19711, facsimile: (302) 453-4400, Attention: Corporate Trust Administration; (c) with respect to the Regular Trustees, to them at c/o Bank of America Corporation, NC1-007-07-06, 100 North Tryon Street, Charlotte, North Carolina, 28255, Attention: Corporate Treasury—Securities Administration, facsimile (704) 386-0270; and (d) with respect to the Trust, to its principal office specified in Section 2.2, with a copy to the Property Trustee. Such notice, demand or other communication to or upon the Trust, the Property Trustee or the Regular Trustees shall be deemed to have been sufficiently given or made only upon actual receipt of the writing by the Trust, the Property Trustee or such Regular Trustee.

Section 12.9 *Agreement Not to Petition.*

To the fullest extent permitted by law, each of the Trustees and the Sponsor agree for the benefit of the Holders that, until at least one year and one day after the Trust has been dissolved in accordance with Article IX, they shall not file, or join in the filing of, a petition against the Trust under any bankruptcy, insolvency, reorganization or other similar law (including the United States Bankruptcy Code) (collectively, "*Bankruptcy Laws*") or otherwise join in the commencement of any proceeding against the Trust under any Bankruptcy Law. If the Sponsor takes action in violation of this Section 12.9, the Property Trustee agrees, for the benefit of Holders, that at the expense of the Sponsor, it shall file an answer with the bankruptcy court or otherwise properly contest the filing of such petition by the Sponsor against the Trust or the commencement of such action and raise the defense that the Sponsor has agreed in writing not to take such action and should be stopped and precluded therefrom and such other defenses, if any, as counsel for the Trustee or the Trust may assert.

Section 12.10 *Trust Indenture Act; Conflict with Trust Indenture Act.*

(a) If any provision hereof limits, qualifies or conflicts with a provision of the Trust Indenture Act that is required under such Act to be a part of and govern this Declaration, the latter provision shall control. If any provision of this Declaration modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded, the latter provision shall be deemed to apply to this Declaration as so modified or to be excluded, as the case may be.

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

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

Section 12.11 *Acceptance of Terms of Declaration, Guarantee Agreements and Indenture.*

THE RECEIPT AND ACCEPTANCE OF A TRUST SECURITY OR ANY INTEREST THEREIN BY OR ON BEHALF OF A HOLDER OR ANY BENEFICIAL OWNER, WITHOUT ANY SIGNATURE OR FURTHER MANIFESTATION OF ASSENT, SHALL CONSTITUTE THE UNCONDITIONAL ACCEPTANCE BY THE HOLDER AND ALL OTHERS HAVING A BENEFICIAL INTEREST IN SUCH TRUST SECURITY OF ALL THE TERMS AND PROVISIONS OF THIS DECLARATION, THE GUARANTEE AGREEMENTS AND THE INDENTURE, AND AGREEMENT TO THE SUBORDINATION PROVISIONS AND OTHER TERMS OF THE GUARANTEE AGREEMENTS AND THE INDENTURE, AND SHALL CONSTITUTE THE AGREEMENT OF THE TRUST, SUCH HOLDER AND SUCH OTHERS THAT THE TERMS AND PROVISIONS OF THIS DECLARATION SHALL BE BINDING, OPERATIVE AND EFFECTIVE AS BETWEEN THE TRUST AND SUCH HOLDER AND SUCH OTHERS.

* * * *

Section 12.12 *Force Majeure*

In no event shall the Property Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Property Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

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

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Declaration as of the day and year first above written.

BANK OF AMERICA CORPORATION, as Sponsor

By: /s/ Ann J. Travis
Name: Ann J. Travis
Title: Senior Vice President

THE BANK OF NEW YORK,
not in its individual capacity, but solely as Property Trustee

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

THE BANK OF NEW YORK (DELAWARE),
not in its individual capacity, but solely as Delaware Trustee

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

/s/ James T. Houghton
James T. Houghton, as Regular Trustee

/s/ Richard L. Nichols, Jr.
Richard L. Nichols, Jr., as Regular Trustee

/s/ Ann J. Travis
Ann J. Travis, as Regular Trustee

EXHIBIT A

[ORIGINAL CERTIFICATE OF TRUST]
A-1

DECLARATION

A-1

AMENDED AND RESTATED DECLARATION OF TRUST

EXHIBIT B

FORM OF CORPORATE HITS CERTIFICATE

{*For inclusion in Global Certificates only* – THIS CERTIFICATE IS A GLOBAL CERTIFICATE WITHIN THE MEANING OF THE DECLARATION HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY (THE ***"DEPOSITARY"***) OR ITS NOMINEE. THIS CERTIFICATE IS EXCHANGEABLE FOR CERTIFICATES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE DECLARATION AND NO TRANSFER OF THIS CERTIFICATE (OTHER THAN A TRANSFER OF THIS CERTIFICATE AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY 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, IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENTAL AGENCY AND INVOLVES INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF PRINCIPAL.

No. _____ Number of Corporate HITS: _____

CUSIP No.: 00518VAC9
ISIN: US05518VAC90

BAC Capital Trust XIV

Corporate HITS

This Corporate HITS Certificate certifies that **[_____]** is the registered Holder of the number of Corporate HITS set forth above {*for inclusion in Global Certificates only* – or such other number of Corporate HITS reflected in the Schedule of Increases and Decreases in the Global Certificate attached hereto}. Each Corporate HITS represents a beneficial interest in BAC Capital Trust XIV (the ***"Trust"***), having a Liquidation Amount of $1,000. The Corporate HITS 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 as provided in Section 5.4 of the Declaration (as defined below). The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Corporate HITS are set forth in, and this certificate and the Corporate HITS represented hereby are issued and shall in all respects be subject to the terms and provisions of the Amended and Restated Declaration of Trust of

the Amended and Restated Declaration of Trust, dated as of February 16, 2007, as the same may be amended and restated from time to time (the ***"Declaration"***), including the designation of the terms of the Preferred HITS as set forth therein. The Holder is entitled to the benefits of the Guarantee Agreement entered into by the Sponsor and The Bank of New York, as Guarantee Trustee, dated as of February 16, 2007 (the ***"Guarantee Agreement"***). All capitalized terms used herein that are defined in the Declaration have the meaning set forth therein.

Section 5.13(d) of the Declaration provides for the procedures pursuant to which Holders of Corporate HITS and Treasury HITS may exchange Corporate HITS and Treasury HITS for Preferred HITS and Qualifying Treasury Securities and Section 5.14(f) of the Declaration provides for the procedures pursuant to which Holders of Corporate HITS may elect to exchange Corporate HITS in the event a Remarketing is Successful. The forms of Recombination Notice and Request and Notice of Contingent Disposition Election required to be delivered in connection therewith are printed on the reverse hereof.

A copy of each of the Declaration and the Guarantee Agreement is available for inspection at the offices of the Property Trustee.

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

IN WITNESS WHEREOF, the Trust acting through one of its Regular Trustees has executed this Corporate HITS Certificate.

BAC CAPITAL TRUST XIV, acting through one of its Regular Trustees

By: _____
Name: _____
Date: _____

CERTIFICATE OF AUTHENTICATION

This certificate represents the Corporate HITS referred to in the within-mentioned Declaration.

Dated:

THE BANK OF NEW YORK TRUST COMPANY, N.A.,
as Securities Registrar

By: _____
Authorized Signatory

Distributions payable on each Corporate HITS will be set at, (i) with respect to the period from the Closing Date to but not including the Remarketing Settlement Date for a Successful Remarketing or, in the event of a Failed Remarketing, the Stock Purchase Date, 5.48% per annum (calculated on a 30/360 Basis), and (ii) thereafter for so long as Corporate HITS remain outstanding, the rate per annum corresponding to interest payments by the Corporation on the Notes (the "***Coupon Rate***"). The Coupon Rate is payable on the stated liquidation amount of $1,000 per Corporate HITS, 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 will bear interest thereon (to the extent permitted by applicable law) at the Coupon Rate, compounded semi-annually. The amount of Distributions payable for any period will be computed on the basis of (a) for periods prior to the later of March 15, 2012 and the Stock Purchase Date, a 360-day year of twelve 30-day months and (b) for periods beginning on or after such date, a 360-day year and the number of days actually elapsed.

Except as otherwise described below, Distributions on the Corporate HITS will be cumulative, will accrue from the date of original issuance and will be payable semi-annually in arrears on (i) each March 15 and September 15, commencing on the later of the first such date on which Corporate HITS are Outstanding and September 15, 2007 and continuing through and including the last such date to occur prior to the Remarketing Settlement Date for a Successful Remarketing, and (ii) thereafter for so long as Corporate HITS remain outstanding, each day that is an interest payment date for the Notes (each a "***Distribution Date***"), to the Person in whose name the Corporate HITS is registered at the close of business on the regular record date for such installment, which will be the last day of the month immediately preceding the month in which the Distribution Date falls. The Trust will make Distributions on the Corporate HITS only to the extent it has received payments from the Sponsor on the Corresponding Assets. The Sponsor has the right to defer payments on the Corresponding Assets from time to time and in the event of such deferral, Distributions will also be deferred for the same period.

THE CORPORATE HITS SHALL BE REDEEMABLE AS PROVIDED IN THE DECLARATION.

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this instrument, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM: as tenants in common

UNIF GIFT MIN ACT: _____ Custodian _____ (cust)(minor) Under Uniform Gifts to Minors Act of _____

TENANT: as tenants by the entireties

JT TEN: as joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used though not in the above list.

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto

(Please insert Social Security or Taxpayer I.D.
or other Identifying Number of Assignee)

(Please print or type name and address including Postal Zip Code of Assignee)

the within Corporate HITS Certificates and all rights thereunder, hereby irrevocably constituting and appointing attorney_____, to transfer said Corporate HITS Certificates on the books of BAC Capital Trust XIV, with full power of substitution in the premises.

Dated:

Signature

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS IT APPEARS UPON THE FACE OF THE WITHIN CORPORATE HITS CERTIFICATES IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.

SIGNATURE GUARANTEE:

FORM OF RECOMBINATION NOTICE AND REQUEST

The Bank of New York Trust Company, N.A.
as Collateral Agent and Securities Registrar
10161 Centurion Parkway, 2nd Floor
Jacksonville, Florida 32256
Attention: Corporate Trust Administration

Re: Treasury and Corporate HITS of BAC Capital Trust XIV

The undersigned Holder hereby notifies you pursuant to Section 5.13(d) of the Amended and Restated Declaration of Trust, dated as of February 16, 2007, of BAC Capital Trust XIV (the "***Declaration***"), among Bank of America Corporation, as Sponsor, The Bank of New York, as Property Trustee, The Bank of New York, as Delaware Trustee, the Regular Trustees (as named therein) and the several Holders of the Trust Securities, and Section 6.03(a) of the Collateral Agreement, that the Holder:

(i) is transferring $ _____ Liquidation Amount of Treasury HITS and Corporate HITS in connection with an Exchange of such Treasury HITS and Corporate HITS for a Like Amount of Preferred HITS and Qualifying Treasury Securities,

(ii) hereby requests the Collateral Agent to release from the Pledge and deliver to the Holder Qualifying Treasury Securities in a principal amount equal to such Liquidation Amount, and

(iii) hereby requests the delivery to the Holder of such Preferred HITS of a Like Amount.

All capitalized terms used herein that are defined in the Declaration have the meaning set forth therein. The undersigned Holder has paid all applicable fees and expenses relating to such Exchange.

Date: Signature Guarantee:

Please print name and address of Registered Holder:

Name: Social Security or other Taxpayer Identification Number, if any:

Address:

FORM OF NOTICE OF CONTINGENT DISPOSITION ELECTION

The Bank of New York Trust Company, N.A.
as Collateral Agent and Securities Registrar
10161 Centurion Parkway, 2nd Floor
Jacksonville, Florida 32256
Attention: Corporate Trust Administration

Re: Corporate HITS of BAC Capital Trust XIV

The undersigned Holder hereby notifies you pursuant to Section 5.14(f) of the Amended and Restated Declaration of Trust, dated as of February 16, 2007, of BAC Capital Trust XIV (the "***Declaration***"), among Bank of America Corporation, as Sponsor, The Bank of New York, as Property Trustee, The Bank of New York, as Delaware Trustee, the Regular Trustees (as named therein) and the several Holders of the Trust Securities, and Section 8.03 of the Collateral Agreement, that the Holder:

(i) is transferring $ _____ Corporate HITS to the Securities Registrar, and

(ii) hereby requests the payment to the Holder, if the upcoming Remarketing is Successful, of an amount in cash for each such Corporate HITS equal to the proceeds of the sale of $1,000 principal amount of Notes, it being understood that if such Remarketing is not Successful, this Notice shall be disregarded.

All capitalized terms used herein that are defined in the Declaration have the meaning set forth therein. The undersigned Holder has paid all applicable fees and expenses relating to such Contingent Disposition Election.

Date: Signature Guarantee:

Please print name and address of Registered Holder:

Name: Social Security or other Taxpayer Identification Number, if any:

Address:

{TO BE ATTACHED TO GLOBAL CERTIFICATES}

SCHEDULE OF INCREASES AND DECREASES IN GLOBAL CERTIFICATE

The following increases or decreases in this Global Certificate have been made:

Amount of increase in Number of Corporate HITS evidenced by this Global Certificate	Amount of decrease in Number of Corporate HITS evidenced by this Global Certificate	Number of Corporate HITS evidenced by this Global Certificate following such decrease or increase	Signature of authorized signatory of Securities Registrar

EXHIBIT C

FORM OF TRUST COMMON SECURITIES 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 144 UNDER THE ACT. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD OR OTHERWISE TRANSFERRED EXCEPT TO A DIRECT OR INDIRECT SUBSIDIARY OF THE SPONSOR IN ACCORDANCE WITH SECTION 5.10 OF THE DECLARATION.

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, IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENTAL AGENCY AND INVOLVES INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF PRINCIPAL.

No. _____

BAC Capital Trust XIV

100
Common Securities
(liquidation amount $1,000 per Common Security)

BAC CAPITAL TRUST XIV, a statutory trust formed under the laws of the State of Delaware (the "***Trust***"), hereby certifies that Bank of America Corporation, a Delaware corporation (the "***Holder***"), is the registered owner of 100 common securities of the Trust representing undivided common beneficial interests in the assets of the Trust designated the BAC Capital Trust XIV Adjustable Rate Common Securities (liquidation amount $1,000 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 February 16, 2007, as the same may be amended from time to time (the "***Declaration***"), including the designation of the terms of the Common Securities as set forth in 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 Trust Common

Securities Guarantee Agreement 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 Guarantee Agreement 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.

IN WITNESS WHEREOF, the Trust acting through one of its Regular Trustees has executed this certificate.

BAC CAPITAL TRUST XIV

By: _____
Name:
Date:

CERTIFICATE OF AUTHENTICATION

This certificate represents the Common Securities referred to in the within-mentioned Declaration.

Dated:

THE BANK OF NEW YORK TRUST COMPANY, N.A.,
as Securities Registrar

By: _____
Authorized Signatory

Distributions on each Common Security will be payable (i) from the date of issuance through the later of March 15, 2012 and the Stock Purchase Date, at a rate per annum of 5.63% and (ii) thereafter, at a rate per annum equal to the greater of (A) Three-Month LIBOR plus a spread of 0.40 and (B) 4.00% (the "***Coupon Rate***") of the stated liquidation amount of $1,000 per Common Security. Distributions in arrears will continue to accumulate at the same rate compounded semi-annually through the later of March 15, 2012 and the Stock Purchase Date, and thereafter quarterly. 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) for periods prior to the later of March 15, 2012 and the Stock Purchase Date, a 360-day year of twelve 30-day months and (b) for periods beginning on or after such date, a 360-day year and the number of days actually elapsed.

Except as otherwise described below, Distributions on the Common Securities will accrue from the date of original issuance and will be payable as follows: (i) semi-annually in arrears on each March 15 and September 15 for each Distribution Period from the date of original issuance to the later of March 15, 2012 and the Stock Purchase Date, commencing on September 15, 2007, (ii) after the later of March 15, 2012 and the Stock Purchase Date, quarterly in arrears on each March 15, June 15, September 15 and December 15 (each a "***Distribution Date***"), and (iii) on the Stock Purchase Date if not otherwise a regular Distribution Date. Distributions will be payable to Holders of record on the last day of the month immediately prior to such payment dates, which payment dates shall correspond to the interest payment dates on the Notes. Distributions shall be cumulative for each Regular Distribution Date to and including the Stock Purchase Date and non-cumulative thereafter. The Sponsor has the right to defer payments on the Corresponding Assets from time to time and in the event of such deferral, Distributions will also be deferred for the same period.

THE COMMON SECURITIES SHALL BE REDEEMABLE AS PROVIDED IN THE DECLARATION.

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[2]: _____

[2] 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.

EXHIBIT D

FORM OF PREFERRED HITS CERTIFICATE

{*For inclusion in Global Certificates only* – THIS CERTIFICATE IS A GLOBAL CERTIFICATE WITHIN THE MEANING OF THE DECLARATION HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY (THE "***DEPOSITARY***") OR ITS NOMINEE. THIS CERTIFICATE IS EXCHANGEABLE FOR CERTIFICATES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE DECLARATION AND NO TRANSFER OF THIS CERTIFICATE (OTHER THAN A TRANSFER OF THIS CERTIFICATE AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY 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, IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENTAL AGENCY AND INVOLVES INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF PRINCIPAL.

No. _____ Number of Preferred HITS: _____

CUSIP No.: 05518VAA3
ISIN: US05518VAA35

BAC Capital Trust XIV

Preferred HITS

This Preferred HITS Certificate certifies that **[_____]** is the registered Holder of the number of Preferred HITS set forth above {*for inclusion in Global Certificates only* – or such other number of Preferred HITS reflected in the Schedule of Increases and Decreases in the Global Certificate attached hereto}. Each Preferred HITS represents a beneficial interest in BAC Capital Trust XIV (the "***Trust***"), having a Liquidation Amount of $1,000. The Preferred HITS 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 as provided in Section 5.4 of the Declaration (as defined below). The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Preferred HITS are set forth in, and this certificate and the Preferred HITS represented hereby are issued and shall in all respects be subject to the terms and provisions of the Amended and Restated Declaration of Trust,

dated as of February 16, 2007, as the same may be amended and restated from time to time (the ***"Declaration"***), including the designation of the terms of the Preferred HITS as set forth therein. The Holder is entitled to the benefits of the Guarantee Agreement entered into by the Sponsor and The Bank of New York, as Guarantee Trustee, dated as of February 16, 2007 (the ***"Guarantee Agreement"***). All capitalized terms used herein that are defined in the Declaration have the meaning set forth therein.

Section 5.13(b) of the Declaration provides for the procedures pursuant to which Holders of Preferred HITS may exchange Preferred HITS and Qualifying Treasury Securities for Treasury HITS and Corporate HITS and Section 5.14(d) of the Declaration provides for the procedures pursuant to which Holders of Preferred HITS may elect to exchange Preferred HITS and Qualifying Treasury Securities for Treasury HITS and Corporate HITS in the event a Remarketing is Successful. The forms of Splitting Notice and Request and Notice of Contingent Exchange Election required to be delivered in connection therewith are printed on the reverse hereof.

A copy of each of the Declaration and the Guarantee Agreement is available for inspection at the offices of the Property Trustee.

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

IN WITNESS WHEREOF, the Trust acting through one of its Regular Trustees has executed this Preferred HITS Certificate.

BAC CAPITAL TRUST XIV, acting through one of its Regular Trustees

By: _____
Name: _____
Date: _____

CERTIFICATE OF AUTHENTICATION

This certificate represents the Preferred HITS referred to in the within-mentioned Declaration.

Dated:

THE BANK OF NEW YORK TRUST COMPANY, N.A.,
as Securities Registrar

By: _____
Authorized Signatory

Distributions payable on each Preferred HITS will be set at, (i) from the Closing Date to but not including the later of March 15, 2012 and the Stock Purchase Date (and for each related Distribution Period), 5.63% per annum (calculated on a 30/360 Basis) and (ii) thereafter, for each Distribution Period and related Regular Distribution Date, the greater of (A) Three-Month LIBOR for such Distribution Period plus 0.40% and (B) 4.00 % of the Liquidation Amount per Preferred HITS (calculated on an Actual/360 Basis) (the "***Coupon Rate***"). The Coupon Rate is payable on the stated liquidation amount of $1,000 per Preferred HITS, 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 will bear interest thereon (to the extent permitted by applicable law) at the Coupon Rate, compounded semi-annually through the later of March 15, 2012 and the Stock Purchase Date, and thereafter quarterly. The amount of Distributions payable for any period will be computed on the basis of (a) for periods prior to the later of March 15, 2012 and the Stock Purchase Date, a 360-day year of twelve 30-day months and (b) for periods beginning on or after such date, a 360-day year and the number of days actually elapsed.

Except as otherwise described below, Distributions on the Preferred HITS will accrue from the date of original issuance and will be payable as follows: (i) semi-annually in arrears for each March 15 and September 15 prior to and including the later of March 15, 2012 and the Stock Purchase Date, commencing September 15, 2007, and (ii) quarterly in arrears for each March 15, June 15, September 15 and December 15 after the later of March 15, 2012 and the Stock Purchase Date (each a "***Distribution Date***"), and on the Stock Purchase Date if not otherwise a regular Distribution Date, to the Person in whose name the Preferred HITS is registered at the close of business on the regular record date for such installment, which will be the last day of the month immediately preceding the month in which the Distribution Date falls. Distributions shall be cumulative for each Regular Distribution Date to and including the Stock Purchase Date and non-cumulative thereafter. The Trust will make Distributions on the Preferred HITS only to the extent it has received payments from the Sponsor on the Corresponding Assets. The Sponsor has the right to defer payments on the Corresponding Assets from time to time and in the event of such deferral, Distributions will also be deferred for the same period.

THE PREFERRED HITS SHALL BE REDEEMABLE AS PROVIDED IN THE DECLARATION.

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this instrument, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM: as tenants in common

UNIF GIFT MIN ACT: _____ Custodian _____ (cust)(minor) Under Uniform Gifts to Minors Act of _____

TENANT: as tenants by the entireties

JT TEN: as joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used though not in the above list.

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto

(Please insert Social Security or Taxpayer I.D.
or other Identifying Number of Assignee)

(Please print or type name and address including Postal Zip Code of Assignee)

the within Preferred HITS Certificates and all rights thereunder, hereby irrevocably constituting and appointing attorney_____, to transfer said Preferred HITS Certificates on the books of BAC Capital Trust XIV with full power of substitution in the premises.

Dated:

Signature:

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Preferred HITS Certificates in every particular, without alteration or enlargement or any change whatsoever.

Signature Guarantee:

FORM OF SPLITTING NOTICE AND REQUEST

The Bank of New York Trust Company, N.A.
as Collateral Agent and Securities Registrar
10161 Centurion Parkway, 2nd Floor
Jacksonville, Florida 32256
Attention: Corporate Trust Administration

Re: Preferred HITS of BAC Capital Trust XIV

The undersigned Holder hereby notifies you pursuant to Section 5.13(b) of the Amended and Restated Declaration of Trust, dated as of February 16, 2007, of BAC Capital Trust XIV (the ***"Declaration"***), among Bank of America Corporation, as Sponsor, The Bank of New York, as Property Trustee, The Bank of New York, as Delaware Trustee, the Regular Trustees (as named therein) and the several Holders of the Trust Securities, and Section 6.02 of the Collateral Agreement, that the Holder:

(i) is depositing the appropriate Qualifying Treasury Securities with The Bank of New York Trust Company, N.A., as Collateral Agent, for deposit in the Collateral Account,

(ii) is transferring $_____ Liquidation Amount of the related Preferred HITS to the Securities Registrar in connection with an Exchange of such Preferred HITS and Qualifying Treasury Securities for a Like Amount of Treasury HITS and Corporate HITS, and

(iii) hereby requests the delivery to the Holder of such Treasury HITS and Corporate HITS.

All capitalized terms used herein that are defined in the Declaration have the meaning set forth therein. The undersigned Holder has paid all applicable fees and expenses relating to such Exchange.

Date: Signature Guarantee:

Please print name and address of Registered Holder:

Name: Social Security or other Taxpayer Identification Number, if any:

Address:

FORM OF NOTICE OF CONTINGENT EXCHANGE ELECTION

The Bank of New York Trust Company, N.A.
as Collateral Agent and Securities Registrar
10161 Centurion Parkway, 2nd Floor
Jacksonville, Florida 32256
Attention: Corporate Trust Administration

Re: Preferred HITS of BAC Capital Trust XIV

The undersigned Holder hereby notifies you pursuant to Section 5.14(d) of the Amended and Restated Declaration of Trust, dated as of February 16, 2007, of BAC Capital Trust XIV (the "***Declaration***"), among Bank of America Corporation, as Sponsor, The Bank of New York, as Property Trustee, The Bank of New York, as Delaware Trustee, the Regular Trustees (as named therein) and the several Holders of the Trust Securities, and Section 8.02 of the Collateral Agreement, that the Holder:

(i) is depositing the appropriate Qualifying Treasury Securities with The Bank of New York Trust Company, N.A., as Collateral Agent, for deposit in the Collateral Account,

(ii) is transferring $ _____ Liquidation Amount of the related Preferred HITS to the Securities Registrar in connection with a Contingent Exchange Election of such Preferred HITS and Qualifying Treasury Securities for a Like Amount of Treasury HITS and Corporate HITS, and

(iii) hereby requests the delivery to the Holder of such Treasury HITS and Corporate HITS if the upcoming Remarketing is Successful, it being understood that if such Remarketing is not Successful, this Notice shall be disregarded and the Collateral Agent shall return such Qualifying Treasury Securities to the Holder promptly after the Remarketing.

All capitalized terms used herein that are defined in the Declaration have the meaning set forth therein. The undersigned Holder has paid all applicable fees and expenses relating to such Contingent Exchange Election.

Date: Signature Guarantee:

Please print name and address of Registered Holder:

Name: Social Security or other Taxpayer Identification Number, if any:

Address:

{TO BE ATTACHED TO GLOBAL CERTIFICATES}

SCHEDULE OF INCREASES AND DECREASES IN GLOBAL CERTIFICATE

The following increases or decreases in this Global Certificate have been made:

Amount of increase in Number of Preferred HITS evidenced by this Global Certificate	Amount of decrease in Number of Preferred HITS evidenced by this Global Certificate	Number of Preferred HITS evidenced by this Global Certificate following such decrease or increase	Signature of authorized signatory of Securities Registrar

FORM OF TREASURY HITS CERTIFICATE

{*For inclusion in Global Certificates only* – THIS CERTIFICATE IS A GLOBAL CERTIFICATE WITHIN THE MEANING OF THE DECLARATION HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY (THE "***DEPOSITARY***") OR ITS NOMINEE. THIS CERTIFICATE IS EXCHANGEABLE FOR CERTIFICATES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE DECLARATION AND NO TRANSFER OF THIS CERTIFICATE (OTHER THAN A TRANSFER OF THIS CERTIFICATE AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY 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, IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENTAL AGENCY AND INVOLVES INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF PRINCIPAL.

No. _____ Number of Preferred HITS: _____

CUSIP No.: 05518VAB1
ISIN: US05518VAB18

BAC Capital Trust XIV

Treasury HITS

This Treasury HITS Certificate certifies that [_____] is the registered Holder of the number of Treasury HITS set forth above {*for inclusion in Global Certificates only* – or such other number of Treasury HITS reflected in the Schedule of Increases and Decreases in the Global Certificate attached hereto}. Each Treasury HITS represents a beneficial interest in BAC Capital Trust XIV (the "Trust"), having a Liquidation Amount of $1,000. The Treasury HITS 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 as provided in Section 5.4 of the Declaration (as defined below). The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Treasury HITS are set forth in, and this certificate and the Treasury HITS represented hereby are issued and shall in all respects be subject to the terms and provisions of the Amended and Restated Declaration of Trust of

the Trust, dated as of February 16, 2007, as the same may be amended and restated from time to time (the "***Declaration***"), including the designation of the terms of the Treasury HITS as set forth therein. The Holder is entitled to the benefits of the Guarantee Agreement entered into by the Sponsor and The Bank of New York, as Guarantee Trustee, dated as of February 16, 2007 (the "***Guarantee Agreement***"). All capitalized terms used herein that are defined in the Declaration have the meaning set forth therein.

Section 5.13(d) of the Declaration provides for the procedures pursuant to which Holders of Corporate HITS and Treasury HITS may exchange them for Preferred HITS and Qualifying Treasury Securities. The form of Recombination Notice and Request required to be delivered in connection therewith is printed on the reverse hereof.

A copy of each of the Declaration and the Guarantee Agreement is available for inspection at the offices of the Property Trustee.

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

IN WITNESS WHEREOF, the Trust acting through one of its Regular Trustees has executed this Treasury HITS Certificate.

BAC CAPITAL TRUST XIV, acting through one of its Regular Trustees

By: _____
Name: _____
Date: _____

CERTIFICATE OF AUTHENTICATION

This certificate represents the Treasury HITS referred to in the within-mentioned Declaration.

Dated:

THE BANK OF NEW YORK TRUST COMPANY, N.A.,
as Securities Registrar

By: _____
Authorized Signatory

Distributions payable on each Treasury HITS will be set at 0.15% per annum accruing for each Treasury HITS from the Regular Distribution Date immediately preceding its issuance, on a cumulative basis (the "***Coupon Rate***"). The Coupon Rate is payable on the stated liquidation amount of $1,000 per Treasury HITS, such rate being the rate of Contract Payments payable with respect to the Notes to be held by the Property Trustee on behalf of the Trust. In addition, additional Distributions constituting the Treasury HITS Treasury Roll Over Amount as described in the Declaration is also payable on the Treasury HITS. Distributions in arrears will bear interest thereon (to the extent permitted by applicable law) at the Coupon Rate, compounded semi-annually. The amount of Distributions payable for any period will be computed on the basis of a 360-day year and twelve 30-day months.

Except as otherwise described below, Distributions on the Treasury HITS will be cumulative, will accrue from the date of original issuance and will be payable semi-annually in arrears on (i) each March 15 and September 15 commencing the first such date on which Treasury HITS are outstanding (each a "***Distribution Date***") and (ii) the Stock Purchase Date if not otherwise a Distribution Date (*provided*, *however*, that in any event the last Distribution Date for the Treasury HITS shall be the Stock Purchase Date, except to the extent subordinated notes related to deferred interest are outstanding), to the Person in whose name the Treasury HITS is registered at the close of business on the regular record date for such installment, which will be the last day of the month immediately preceding the month in which the Distribution Date falls. The Trust will make Distributions on the Treasury HITS only to the extent it has received payments from the Sponsor on the Corresponding Assets. The Sponsor has the right to defer payments on the Corresponding Assets from time to time and in the event of such deferral, Distributions will also be deferred for the same period.

THE TREASURY HITS SHALL BE REDEEMABLE AS PROVIDED IN THE DECLARATION.

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this instrument, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM: as tenants in common

UNIF GIFT MIN ACT: _____ Custodian _____(cust)(minor) Under Uniform Gifts to Minors Act of _____

TENANT: as tenants by the entireties

JT TEN: as joint tenants with right of survivorship and not as tenants in common

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto

(Please insert Social Security or Taxpayer I.D.
or other Identifying Number of Assignee)

(Please print or type name and address including Postal Zip Code of Assignee)

the within Treasury HITS Certificates and all rights thereunder, hereby irrevocably constituting and appointing attorney , to transfer said Treasury HITS Certificates on the books of BAC Capital Trust XIV, with full power of substitution in the premises.

Dated:

Signature

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Treasury HITS Certificates in every particular, without alteration or enlargement or any change whatsoever.

SIGNATURE GUARANTEE:

FORM OF RECOMBINATION NOTICE AND REQUEST

The Bank of New York Trust Company, N.A.
as Collateral Agent and Securities Registrar
10161 Centurion Parkway, 2nd Floor
Jacksonville, Florida 32256
Attention: Corporate Trust Administration

Re: Treasury HITS and Corporate HITS of BAC Capital Trust XIV

The undersigned Holder hereby notifies you pursuant to Section 5.13(d) of the Amended and Restated Declaration of Trust, dated as of February 16, 2007, of BAC Capital Trust XIV (the ***"Declaration"***), among Bank of America Corporation, as Sponsor, The Bank of New York, as Property Trustee, The Bank of New York, as Delaware Trustee, the Regular Trustees (as named therein) and the several Holders of the Trust Securities, and Section 6.03 of the Collateral Agreement, that the Holder:

(i) is transferring $_____ Liquidation Amount of Treasury HITS and Corporate HITS in connection with an Exchange of such Treasury HITS and Corporate HITS for a Like Amount of Preferred HITS and Qualifying Treasury Securities,

(ii) hereby requests the Collateral Agent to release from the Pledge and deliver to the Holder Qualifying Treasury Securities in a principal amount equal to such Liquidation Amount, and

(iii) hereby requests the delivery to the Holder of such Preferred HITS of a Like Amount.

All capitalized terms used herein that are defined in the Declaration have the meaning set forth therein. The undersigned Holder has paid all applicable fees and expenses relating to such Exchange.

Date: Signature Guarantee:

Please print name and address of Registered Holder:

Name: Social Security or other Taxpayer Identification Number, if any:

Address:

{TO BE ATTACHED TO GLOBAL CERTIFICATES}

SCHEDULE OF INCREASES AND DECREASES IN GLOBAL CERTIFICATE

The following increases or decreases in this Global Certificate have been made:

Amount of increase in Number of Treasury HITS evidenced by this Global Certificate	Amount of decrease in Number of Treasury HITS evidenced by this Global Certificate	Number of Treasury HITS evidenced by this Global Certificate following such decrease or increase	Signature of authorized signatory of Securities Registrar

THIRTEENTH SUPPLEMENTAL INDENTURE

BETWEEN

BANK OF AMERICA CORPORATION

AND

THE BANK OF NEW YORK TRUST COMPANY, N.A.

DATED AS OF FEBRUARY 16, 2007

Supplement to Restated Junior Subordinated Debt Securities Indenture dated as of November 1, 2001, as supplemented

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THIRTEENTH SUPPLEMENTAL INDENTURE, dated as of February 16, 2007 (the "Thirteenth Supplemental Indenture"), between **BANK OF AMERICA CORPORATION**, a Delaware corporation (herein after called the "Company"), having its principal office at 100 North Tryon Street, Charlotte, North Carolina 28255, and **THE BANK OF NEW YORK TRUST COMPANY, N.A.,** a national banking association, as successor Trustee (hereinafter called the "Trustee").

RECITALS OF THE COMPANY

The Company and The Bank of New York, as predecessor trustee, entered into a Restated Junior Subordinated Debt Securities Indenture dated as of November 1, 2001 (the "*Base Indenture*").

Section 9.01 of the Base Indenture provides that the Indenture may be amended or supplemented without the consent of any holder of Securities to provide for the issuance of and establish the form and terms and conditions of any series of Securities.

The Company has delivered to the Trustee an Opinion of Counsel and an Officers' Certificate pursuant to Section 9.05 of the Base Indenture to the effect that all conditions precedent provided for in the Base Indenture to the Trustee's execution and delivery of this Thirteenth Supplemental Indenture have been complied with and that this Thirteenth Supplemental Indenture is permitted under the Base Indenture.

BAC Capital Trust XIII, a Delaware statutory trust (the "*Trust*"), has offered to the public a class of beneficial interests known as Floating Rate Preferred Hybrid Income Term Securities (such securities being of the type referred to in the Indenture as the "Preferred Securities" and in this Thirteenth Supplemental Indenture as the "*Preferred HITS*"), which Preferred HITS may be exchanged (together with U.S. Treasury securities) for Treasury HITS and Corporate HITS (each, as defined herein, and collectively the Preferred HITS, Treasury HITS and Corporate HITS are referred to as the *"HITS"*), and proposes to invest the proceeds from the offering, together with the proceeds of the issuance and sale by the Trust to the Company of its common securities (the "*Trust Common Securities*" and together with the HITS, the "*Trust Securities*"), in the Notes (as defined herein).

The Notes will be subject to Remarketing (as defined herein), in connection with which certain terms of the Notes may be changed, all in accordance with the procedures to be set forth in a Remarketing Agreement to be entered into prior to the first Remarketing (as amended or supplemented from time to time, the "*Remarketing Agreement*"), among the Company and the remarketing agent named in the Remarketing Agreement (including any successor or replacement, the "*Remarketing Agent*"), and confirmed and accepted by The Bank of New York, as property trustee of the Trust.

The Company has requested that the Trustee execute and deliver this Thirteenth Supplemental Indenture and satisfy all requirements necessary to make this Thirteenth Supplemental Indenture a valid instrument in accordance with its terms, and to make the Notes, when executed by the Company and authenticated and delivered by the Trustee, the valid obligations of the Company, and all acts and things necessary have been done and performed to

make this Thirteenth Supplemental Indenture enforceable in accordance with its terms, and the execution and delivery of this Thirteenth Supplemental Indenture has been duly authorized in all respects.

NOW, THEREFORE, THIS THIRTEENTH SUPPLEMENTAL INDENTURE WITNESSETH: For and in consideration of the premises and the purchase of the Notes by the holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all holders of the Notes, as follows:

ARTICLE I

DEFINITIONS

Section 1.1 *Definitions*.

For all purposes of this Thirteenth Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(a) Terms defined in the Base Indenture have the same meaning when used in this Thirteenth Supplemental Indenture unless otherwise specified herein.

(b) The terms defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular.

(c) The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Thirteenth Supplemental Indenture as a whole and not to any particular Article, Section or other subdivision, and any reference to an Article, Section or other subdivision refers to an Article, Section or other subdivision of this Thirteenth Supplemental Indenture.

(d) A term defined anywhere in this Thirteenth Supplemental Indenture has the same meaning throughout.

(e) The following terms have the meanings given to them in this Section 1.1:

"*APM Commencement Date*" means, with respect to any Extension Period, the second anniversary of the commencement of such Extension Period.

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

"*Business Day*" means any day other than a Saturday, Sunday or any other day on which banking institutions and trust companies in New York, New York, or Charlotte, North Carolina are permitted or required by any applicable law to close.

"*Calculation Agent*" means The Bank of New York Trust Company, N.A., or its successor, or any other calculation agent appointed by the Company.

"*Capital Treatment Event*" means the reasonable determination by the Company that, as a result of any (i) amendment to, or change in, the laws or regulations of the United States or any political subdivision of or in the United States that is enacted or becomes effective after the initial issuance of the HITS, (ii) proposed change in those laws or regulations that is announced after the initial issuance of the HITS, or (iii) official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying such laws or regulations that is announced after the initial issuance of the HITS, there is more than an insubstantial risk of impairment of the Company's ability to treat the HITS (or any substantial portion) as Tier 1 capital (or the equivalent thereof) for purposes of the capital adequacy guidelines of the Federal Reserve, as then in effect and applicable to the Company.

"*Collateral Agent*" means The Bank of New York Trust Company, N.A., as Collateral Agent under the Collateral Agreement until a successor Collateral Agent shall have become such pursuant to the applicable provisions of the Collateral Agreement, and thereafter. "Collateral Agent" shall mean the Person who is then the Collateral Agent thereunder.

"*Collateral Agreement*" means the Collateral Agreement dated as of February 16, 2007 among the Company, The Bank of New York Trust Company, N.A., as Collateral Agent, Custodial Agent, Securities Intermediary and Securities Registrar, and the Trust, acting through The Bank of New York, as Property Trustee.

"*Commercially Reasonable Efforts*" by the Company to sell shares of its common stock or non-cumulative perpetual preferred stock means commercially reasonable efforts to complete the offer and sale of shares of its common stock or non-cumulative perpetual preferred stock, as the case may be, to third parties that are not affiliates of the Company in public offerings or private placements; provided that the Company shall be deemed to have used such Commercially Reasonable Efforts if a Market Disruption Event occurs and for so long as it continues regardless of whether the Company makes any offers or sales during such period; and provided, further that the Company shall not be deemed to have used such Commercially Reasonable Efforts if the Company determines to not pursue or complete such sale due to pricing, coupon, dividend rate or dilution considerations.

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

"*Corporate HITS*" has the meaning specified in the Declaration.

"*Coupon Rate*" has the meaning specified in Section 2.5.

"*Custodial Agent*" means The Bank of New York Trust Company, N.A., as Custodial Agent under the Collateral Agreement until a successor Custodial Agent shall have become such pursuant to the applicable provisions of the Collateral Agreement, and thereafter "Custodial Agent" shall mean the Person who is then the Custodial Agent thereunder.

"*Custody Note*" has the meaning specified in Section 2.4(d).

"*Declaration*" means the Amended and Restated Declaration of Trust, dated as of February 16, 2007, among the Company, as Sponsor, the Property Trustee, the Delaware Trustee, and the Regular Trustees (each as named therein), with respect to the HITS.

"*Early Dissolution Event*" means the dissolution of the Trust and the distribution of the Notes held by or on behalf of the Trust to the holders of the Trust Securities in accordance with Section 9.4 of the Declaration.

"*Early Remarketing*" means a Remarketing conducted pursuant to the provisions of Section 3.4.

An "*Early Settlement Event*" shall be deemed to have occurred if: (i) the Company's "total risk-based capital ratio" is less than 10%, (ii) the Company's "Tier 1 risk-based capital ratio" is less than 6%, (iii) the Company's "leverage capital ratio" is less than 4%; (iv) the Federal Reserve, in its discretion, anticipates that the Company may fail one or more of the capital tests referred to above in the near term and delivers a notice to the Company so stating; or (v) the Trust is dissolved pursuant to Section 9.2(f) of the Declaration, where the related Early Settlement Event in the case of the tests described in each of (i), (ii) and (iii) above will be deemed to occur on the date the Company files with the Federal Reserve a Form FR Y-9C showing in Schedule HC-R (or successor form) that the related capital measure has been failed. Each such ratio described above will be determined as required pursuant to Appendix A to Regulation Y of the Federal Reserve, 12 C.F.R. Part 225.

"*Eligible Proceeds*" means, with respect to any Interest Payment Date, the net proceeds (after underwriters' or placement agents' fees, commissions or discounts and other expenses relating to the issuance or sale) the Company has received during the 180-day period prior to such Interest Payment Date from the issuance or sale of the Company's common stock or non-cumulative perpetual preferred stock.

"*Extension Period*" has the meaning specified in Section 2.7(a).

"*Failed Remarketing*" means a Final Remarketing that is not Successful.

"*Federal Reserve*" means (i) the Board of Governors of the Federal Reserve System, as from time to time constituted, or if at any time after the execution of this Thirteenth Supplemental Indenture the Federal Reserve is not existing and performing the duties now assigned to it, then the body or bodies performing such duties at such time, or the Federal Reserve Bank of Richmond, or (ii) any successor Federal Reserve Bank (or successor body performing such duties) having primary jurisdiction over the Company.

"*Final Remarketing*" means (i) a Remarketing for a settlement date on February 15, 2013 (or if such day is not a Business Day, the immediately succeeding Business Day), (ii) in the case of an Early Remarketing, the fifth scheduled Remarketing or (iii) in the case of an Early Remarketing in connection with clause (v) of the definition of Early Settlement Event, the first Remarketing.

"*Fixed Rate Reset Cap*", as of any Remarketing Settlement Date, means the prevailing market yield, as determined by the Remarketing Agent, of the benchmark U.S. Treasury security having a remaining maturity that most closely corresponds to the period from such date until the earliest date on which the Notes may be redeemed at the option of the Company in the event of a Successful Remarketing, plus 350 basis points, or 3.50%, per annum.

"*Floating Rate Reset Cap,*" which the Reset Spread may not exceed, means 300 basis points, or 3.00%, per annum.

"*Global Notes*" has the meaning specified in Section 2.4(b).

"*HITS*" means each of the Preferred HITS, the Treasury HITS and the Corporate HITS.

"*Interest Payment Date*" shall have the meaning specified in Section 2.5(a) or as may be specified by the Company following a Remarketing in accordance with Article III.

"*Interest Period*" means the period from and including the most recent Interest Payment Date to which interest has been paid or duly made available for payment (or February 16, 2007 if no interest has been paid or been duly made available for payment) to, but excluding, the next succeeding Interest Payment Date or, if earlier, the Maturity Date of the Notes.

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

"*London Banking Day*" means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London.

"*Market Disruption Event*" means the occurrence or existence of any of the following events or sets of circumstances:

(i) the Company would be required to obtain the consent or approval of its stockholders or a regulatory body (including, without limitation, any securities exchange) or governmental body to issue or sell common stock, rights to purchase common stock or non-cumulative perpetual preferred stock and such consent or approval has not yet been obtained notwithstanding the Company's commercially reasonable efforts to obtain that consent or approval (including, without limitation, failing to obtain the approval for such issuance if required by the Federal Reserve after giving notice to the Federal Reserve as required hereunder);

(ii) trading in securities generally on the New York Stock Exchange or on any other national securities exchange or over-the-counter market on which the Company's common stock and/or preferred stock is then listed or traded shall have been suspended or the settlement of such trading generally shall have been materially disrupted or minimum prices

shall have been established on any such exchange or such market by the Securities and Exchange Commission, by such exchange or by any other regulatory body or governmental body having jurisdiction;

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

(iv) an event occurs and is continuing as a result of which the offering document for such offer and sale of common stock, rights to purchase common stock or non-cumulative perpetual preferred stock would, in the judgment of the Company, 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 and either (a) the disclosure of that event at such time, in the judgment of the Company, is not otherwise required by law and would have a material adverse effect on the business of the Company or (b) the disclosure relates to a previously undisclosed proposed or pending material business transaction, the disclosure of which would impede the ability of the Company to consummate such transaction, provided that no single suspension period contemplated by this paragraph (iv) shall exceed 90 consecutive days and multiple suspension periods contemplated by this paragraph (iv) shall not exceed an aggregate of 180 days in any 360-day period; or

(v) the Company reasonably believes, for reasons other than those referred to in paragraph (iv) above, that the offering document for such offer and sale of common stock, rights to purchase common stock or non-cumulative perpetual preferred stock would not be in compliance with a rule or regulation of the Securities and Exchange Commission and the Company is unable to comply with such rule or regulation or such compliance is unduly burdensome, provided that no single suspension period contemplated by this paragraph (v) shall exceed 90 consecutive days and multiple suspension periods contemplated by this paragraph (v) shall not exceed an aggregate of 180 days in any 360-day period.

"*Maturity Date*" means March 15, 2043 or such earlier date as may be specified by the Company following a Remarketing in accordance with Article III.

"*Notes*" has the meaning specified in Section 2.1.

"*Paying Agent,*" when used with respect to the Notes, means The Bank of New York Trust Company, N.A., as paying agent hereunder or any other Person authorized by the Company to pay the principal of (and premium, if any) or interest on the Notes on behalf of the Company.

"*Paying Agent Office*" means the office of the applicable Paying Agent in New York, New York, which office at the date hereof in the case of The Bank of New York Trust Company, N.A., in its capacity as Paying Agent with respect to the Notes under the Base Indenture and this Thirteenth Supplemental Indenture, is located at 101 Barclay Street, Floor 8 West, New York, New York 10286, Attention: Corporate Trust Administration.

"*Person*" means a legal person, including any individual, corporation, association, partnership (general or limited), joint venture, trust, estate, limited liability company, or other legal entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"*Pledged Notes*" has the meaning specified in the Collateral Agreement.

"*Preferred Stock*" means the Floating Rate Non-Cumulative Preferred Stock, Series F, $100,000 liquidation preference per share, of the Company.

"*Property Trustee*" has the meaning set forth in the Declaration.

"*qualified floating rate*" has the meaning specified in Section 3.3(a)(iii).

"*Qualifying Treasury Securities*" has the meaning specified in the Declaration.

"*Regular Trustee*" means, in respect of the Trust, each individual identified as a "Regular Trustee" in the Declaration, solely in such individual's capacity as Regular Trustee of the Trust under the Declaration and not in such individual's individual capacity, or any successor Regular Trustee appointed as therein provided.

"*Remarketed Notes*" has the meaning specified in Section 2.4(c).

"*Remarketing*" means a remarketing of Notes pursuant to Article III and the Remarketing Agreement.

"*Remarketing Agent*" has the meaning set forth in the introduction to this Thirteenth Supplemental Indenture.

"*Remarketing Agreement*" has the meaning set forth in the introduction to this Thirteenth Supplemental Indenture.

"*Remarketing Date*" means the seventh Business Day preceding each of February 15, 2012, May 15, 2012, August 15, 2012, November 15, 2012 and February 15, 2013 until the settlement of a Successful Remarketing, or if an Early Settlement Event shall have occurred, each of the dates determined in accordance with Section 3.4.

"*Remarketing Period*" means the five consecutive Business Days beginning on the seventh Business Day preceding each of February 15, 2012, May 15, 2012, August 15, 2012, November 15, 2012 and February 15, 2013.

"*Remarketing Settlement Date*" means the February 15, May 15, August 15 or November 15 following the Remarketing Period in which a Successful Remarketing occurs, or if that day is not a Business Day, the immediately preceding Business Day.

"*Remarketing Value*" for each Note equals the present value on the Remarketing Settlement Date of an amount equal to the principal amount of, plus the interest payable on, such Note on the next Interest Payment Date, including any deferred interest, assuming for this purpose, even if not true, that the interest rate on the Notes remains at the rate in effect immediately prior to the Remarketing and all accrued and unpaid interest on the Notes is paid in cash on such date, determined using a discount rate equal to the interest rate on the Bank of America, N.A. Deposit (as defined in the Collateral Agreement).

"*Repayment Date*" has the meaning set forth in Section 2.6(a) hereof.

"*Reset Spread*" means, if the Notes are remarketed as floating rate notes, the spread, if any, set in a Remarketing, as specified in Section 3.3(a).

"*Reset Rate*" means, if the Notes are remarketed as fixed rate notes, the rate of interest on the Notes, if any, set in a Remarketing, as specified in Section 3.3(a).

"*Responsible Officer*" means, when used with respect to The Bank of New York Trust Company, N.A., any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs 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 such person's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of the Indenture.

"*Securities Registrar*" has the meaning specified in Section 2.12.

"*Securities Registrar Office*" means the office of the Securities Registrar at which at any particular time the Company has designated a register known as the "*Securities Register*" in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of the Notes and of transfers of Notes. At the date hereof, in the case of The Bank of New York Trust Company, N.A., such office is located at The Bank of New York, Towermarc Plaza, 2nd Floor, 10161 Centurion Parkway, Jacksonville, Florida 32256, Attention: Corporate Trust Administration.

"*Securities Register*" has the meaning specified in the definition of Securities Registrar Office.

"*Securities Act*" means the Securities Act of 1933 (or any successor statute), as it may be amended from time to time.

"*Senior Obligations*" has the meaning specified in Section 7.1.

"*Stock Purchase Contract Agreement*" means the Stock Purchase Contract Agreement, dated as of February 16, 2007, between the Company and the Trust acting through the Property Trustee.

"*Successful*" has the meaning specified in Section 3.5(a).

"*Tax Event*" has the meaning set forth in the Declaration.

"*Telerate Page 3750*" means the display page so designated on the Moneyline/Telerate Service (or such other page as may replace that page on that service, or such other service as may be nominated as the information vendor, for the purpose of displaying rates or prices comparable to the London Interbank Offered Rate for U.S. dollar deposits).

"*Thirteenth Supplemental Indenture*" means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more agreements supplemental hereto entered into pursuant to the applicable provisions hereof.

"*Three-Month LIBOR*" means, with respect to any Interest Period, the offered rate (expressed as a percentage per annum) for deposits in U.S. dollars for a three-month period commencing on the first day of that Interest Period that appears on Telerate Page 3750 as of 11:00 A.M. (London time) on the second London Banking Day immediately preceding the first day of that Interest Period. If the rate described above does not appear on Telerate Page 3750, Three-Month LIBOR will be determined on the basis of the rates at which deposits in U.S. dollars for a three-month period commencing on the first day of that Interest Period and in a principal amount of not less than $1,000,000 are offered to prime banks in the London interbank market by four major banks in the London interbank market selected by the Company, at approximately 11:00 A.M., London time on the second London Banking Day immediately preceding the first day of that Interest Period. The Calculation Agent will request the principal London office of each of such banks to provide a quotation of its rate. If at least two such quotations are provided, Three-Month LIBOR with respect to that Interest Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of such quotations. If fewer than two quotations are provided, Three-Month LIBOR with respect to that Interest Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of the rates quoted by three major banks in New York, New York, selected by the Company, at approximately 11:00 A.M., New York City time, on the first day of that Interest Period for loans in U.S. dollars to leading European banks for a three-month period commencing on the first day of that Interest Period and in a principal amount of not less than $1,000,000. However, if fewer than three banks selected by the Company to provide quotations are not quoting as described above, Three-Month LIBOR for that Interest Period will be the same as Three-Month LIBOR as determined for the previous Interest Period, or in the case of the first Interest Period, the most recent rate that could have been determined in accordance with the first sentence of this paragraph had the Notes been outstanding. The Calculation Agent's establishment of Three-Month LIBOR and calculation of the amount of interest for each Interest Period will be on file at the Company's principal offices, will be made available to any holder of Notes upon request and will be final and binding in the absence of manifest error.

"*Treasury HITS*" has the meaning specified in the Declaration.

"*Unsuccessful*" has the meaning specified in Section 3.5(b).

"*Underwriting Agreement*" means the Underwriting Agreement, dated as of February 12, 2007, among the Trust, the Company, and the underwriters named therein.

ARTICLE II

GENERAL TERMS AND CONDITIONS OF THE NOTES

Section 2.1 *Designation, Principal Amount and Authorized Denominations.*

There is hereby authorized and established under the terms of the Indenture a series of Securities designated the "Remarketable Floating Rate Junior Subordinated Notes due 2043" (the "Notes"), limited in aggregate principal amount to no more than $1,200,100,000, which amount to be issued shall be as set forth in one or more written orders of the Company for the authentication and delivery of Notes pursuant to Section 2.04 of the Indenture. The denominations in which Notes shall be issuable is $1,000 principal amount and integral multiples thereof.

Section 2.2 *Maturity.*

The Maturity Date of the Notes will be March 15, 2043, subject to change as provided in Article III.

Section 2.3 *Form and Payment.*

Except as provided in Section 2.4, the Notes shall be issued in fully registered definitive form without interest coupons. Principal of and interest on the Notes issued in definitive form will be payable, the transfer of such Notes will be registrable and such Notes will be exchangeable for Notes bearing identical terms and provisions and notices and demands to or upon the Company in respect of the Notes and the Base Indenture, as supplemented by this Thirteenth Supplemental Indenture, may be served at the office or agency of the Trustee, and the Company appoints the Trustee as its agent for the foregoing purposes; provided that payment of interest may be made at the option of the Company by check mailed to the holder at such address as shall appear in the Securities Register or by wire transfer in immediately available funds to the bank account number of such holder specified in writing by the holder not less than ten days before the relevant Interest Payment Date. Notwithstanding the foregoing, so long as the holder of any Note is the Property Trustee on behalf of the Trust, the payment of the principal of and interest (including expenses and taxes of the Trust set forth in Section 4.1, if any) on such Notes held by the Property Trustee will be made at the Paying Agent Office or at such place and to such account as may be designated in writing by the Property Trustee. The Notes may be presented for registration of transfer or exchange at the Securities Registrar Office.

Section 2.4 *Notes Held by Collateral Agent and Custodial Agent; Global Notes; Adjustment of Notes.*

(a) The Notes shall be issued initially in fully registered definitive form in the name of the Property Trustee, on behalf of the Trust, and shall be delivered to the Collateral Agent to be held as Pledged Notes pursuant to the terms of the Collateral Agreement. For so long as such Pledged Notes are held by the Collateral Agent or any Custody Notes are held by the Custodial Agent, in their respective capacities as such under the Collateral Agreement, each such Note shall represent the principal amount so indicated in the Securities Register, *provided* that the aggregate principal amount of all such Notes shall at all times equal the principal amount issued in accordance with Section 2.1.

(b) At any time on or after the first to occur of the Remarketing Settlement Date, an Early Dissolution Event or the redemption of the Corporate HITS by the Trust in exchange for Notes, the Notes in definitive form may be presented to the Securities Registrar for exchange for one or more global Notes in an aggregate principal amount equal to the aggregate principal amount of the Notes so presented (a "Global Note"), to be registered in the name of the Depositary, or its nominee, and delivered to the Depositary, or its custodian, for crediting to the accounts of its participants pursuant to the instructions of the Regular Trustees. The Company upon any such presentation shall execute one or more Global Notes in such aggregate principal amount and deliver the same to the Trustee for authentication and delivery in accordance with the Indenture and this Thirteenth Supplemental Indenture. The Trustee, upon receipt of such Global Notes, together with an Officers' Certificate requesting authentication, will authenticate such Global Notes and deliver them to the Securities Registrar, as custodian for the Depositary. Payments on the Notes issued as Global Notes will be made to the Depositary.

(c) In the event that (i) any Pledged Notes for which no election has been validly made pursuant to Section 8.02(a) of the Collateral Agreement are to be released from the Pledge and delivered to the Remarketing Agent pursuant to Section 8.02(b) of the Collateral Agreement or (ii) any Custody Notes for which an election has been validly made pursuant to Section 8.03(a) of the Collateral Agreement are to be delivered to the Remarketing Agent pursuant to Section 8.03(b) of the Collateral Agreement (collectively, the "*Remarketed Notes*"), such transfers shall be evidenced by an endorsement by the Securities Registrar on the Notes held by the Collateral Agent and the Custodial Agent, respectively, and in the Securities Register reflecting a reduction in the principal amount of such Notes equal in amount to the principal amount of the Remarketed Notes. The Securities Registrar shall confirm any such reduced principal amount by faxing or otherwise delivering a photocopy of such endorsement made on the Notes evidencing such reduced principal amount to the Trustee at the facsimile number or address of the Trustee provided for notices to the Trustee in the Collateral Agreement (or at such other facsimile number or address as the Trustee shall provide to the Securities Registrar). Upon receipt of such confirmation, the Trustee shall instruct the Securities Registrar to increase the principal amount of a Global Note in an amount equal to the aggregate principal amount of the Remarketed Notes by an endorsement made by the Securities Registrar on such Global Note to reflect such increase.

(d) In the event that any Pledged Note is to be released from the Pledge (as defined in the Collateral Agreement) and transferred to the Custody Account (as defined in the Collateral Agreement) pursuant to Section 6.02(a) of the Collateral Agreement (a "*Custody Note*"), as a result of the exchange of Preferred HITS and Qualifying Treasury Securities for Treasury HITS and Corporate HITS as provided in said Section 6.02(a) of the Collateral Agreement, such transfer shall be evidenced by an endorsement by the Securities Registrar on the Pledged Notes held by the Collateral Agent reflecting a reduction in the principal amount of such Pledged Notes and on the Custody Notes held by the Custodial Agent reflecting an increase in the principal amount of such Custody Notes, in each case equal in amount to the principal amount of the Note so transferred. The Collateral Agent and the Custodial Agent shall confirm any such reduced principal amount of Pledged Notes and increased principal amount of Custody

Notes by faxing or otherwise delivering a photocopy of such endorsements made on the Notes evidencing such reduced or increased principal amounts, as applicable, to the Trustee at the facsimile number or address of the Trustee provided for notices to the Trustee in the Collateral Agreement (or at such other facsimile number or address as the Trustee shall provide to the Collateral Agent and the Custodial Agent). Upon receipt of such confirmation, the Trustee shall instruct the Custodial Agent or Securities Registrar to account for such transfer in the manner as specified in the Collateral Agreement.

(e) In the event that a Note is transferred from the Custody Account to the Collateral Account pursuant to Section 6.03(b)(i) of the Collateral Agreement in connection with the exchange of Treasury HITS and Corporate HITS for Preferred HITS and Qualifying Treasury Securities as provided in Section 6.03 of the Collateral Agreement, such transfer shall be evidenced by an endorsement by the Securities Registrar on the Pledged Notes held by the Collateral Agent reflecting an increase in the principal amount of such Pledged Notes and on the Custody Notes held by the Custodial Agent reflecting a reduction in the principal amount of such Custody Notes, in each case equal in amount to the principal amount of the Note so transferred. The Collateral Agent and the Custodial Agent shall confirm any such increased principal amount of Pledged Notes and reduced principal amount of Custody Notes by faxing or otherwise delivering a photocopy of such endorsements made on the Notes evidencing such increased or reduced principal amount, as applicable, to the Trustee at the facsimile number or address of the Trustee provided for notices to the Trustee in the Collateral Agreement (or at such other facsimile number or address as the Trustee shall provide to the Collateral Agent and the Custodial Agent). Upon receipt of such confirmation, the Trustee shall instruct the Custodial Agent or Securities Registrar to account for such transfer in the manner as specified in the Collateral Agreement.

Section 2.5 *Interest*.

(a) Prior to a Remarketing of the Notes, each Note will bear interest at a floating rate equal to Three-Month LIBOR, plus a spread of 0.25% (the "*Coupon Rate*"), from February 16, 2007 until the principal thereof becomes due and payable, and on any overdue principal and (to the extent that payment of such interest is enforceable under applicable law) on any overdue installment of interest or deferred interest at the Coupon Rate, compounded quarterly, payable (subject to the provisions of Section 2.7) quarterly in arrears on March 15, June 15, September 15 and December 15 of each year (each, an "*Interest Payment Date*"), beginning on June 15, 2007, to the Person in whose name such Note or any predecessor Note is registered at the close of business on the regular record date for such interest installment, which, in respect of any Notes of which the Property Trustee is the holder, shall be the close of business on the Business Day next preceding that Interest Payment Date. Notwithstanding the foregoing sentence, if the Notes are no longer held by the Property Trustee or represented by a Global Note, the relevant record dates shall be the close of business on the last day of the month immediately preceding the month in which the Interest Payment Date falls. If there is a Failed Remarketing, interest shall also be payable on each Note on the Stock Purchase Date if the Stock Purchase Date is not otherwise an interest payment date.

(b) The amount of interest payable for any period will be computed on the basis of the actual number of days elapsed in the period and a 360-day year. In the event that

any date on which interest is payable on the Notes is not a Business Day, then payment of interest payable on such date will be made on the next succeeding day which is a Business Day (and without any interest or other payment in respect of any such delay).

(c) As further described in Section 2.7, the Company shall have the right to defer the payment of interest on the Notes, as provided in Section 2.13 of the Base Indenture, for one or more Extension Periods. The Paying Agent shall give notice of the Company's election to begin or extend any Extension Period to the holders of the outstanding Notes in the form of a notice thereof as shall have been prepared by the Company and furnished to the Paying Agent.

Section 2.6 *Redemption of the Notes.*

(a) The Company may from time to time redeem the Notes (A) in whole but not in part, at any time within 90 days after a Tax Event, Capital Treatment Event or an Investment Company Event or (B) in whole or in part, at any date on or after March 15, 2017 (each such date, a "*Repayment Date*"), in either case at a redemption price equal to 100% of the outstanding principal amount thereof plus accrued and unpaid interest, including deferred interest (if any), to the date of redemption, in accordance with Article 14 of the Base Indenture. Any redemption will be made upon not less than 15 nor more than 60 days notice to the holders of the Notes. If the Notes are redeemed in part pursuant to this Section 2.6, the Notes will be redeemed pro rata or by lot or by any other method utilized by the Trustee; provided that if, at the time of redemption, the Notes are registered as a Global Note, the Depositary shall determine, in accordance with its procedures, the principal amount of such Notes held by each holder of a Note to be redeemed. The redemption price shall be paid by 12:00 noon, New York time, on the Repayment Date or at such earlier time as the Company determines provided that the Company shall deposit with the Trustee an amount sufficient to pay the redemption price by 10:00 a.m., New York time, on the Repayment Date. The Company may not redeem the Notes in part if the principal amount has been accelerated and such acceleration has not been rescinded or unless all accrued and unpaid interest has been paid in full on all outstanding Notes for all interest periods terminating on or before the Repayment Date. In connection with a Remarketing, the Company may change the date after which it may redeem Notes to a later date or change the redemption price in accordance with Article III.

(b) The Notes are not entitled to any sinking fund payments.

(c) Payments on the Notes on any Repayment Date will be applied, first, to deferred interest to the extent of Eligible Proceeds raised pursuant to Section 2.9, second, to current interest to the extent not paid from other sources, and third, to the principal of the Notes; *provided* that if the Company is obligated to sell its common stock, mandatorily convertible preferred stock, debt exchangeable for equity, qualifying non-cumulative perpetual preferred stock, REIT preferred securities or qualifying capital securities and apply the net proceeds to payments of principal of or interest on any outstanding securities in addition to the Notes, then on any date and for any period the amount of net proceeds received by the Company from those sales and available for such payments shall be applied first to such other securities having an earlier scheduled maturity date than the Notes and then to the Notes and those other securities having the same scheduled maturity date as the Notes *pro rata* in accordance with their respective outstanding principal amounts and none of such net proceeds shall be applied to any other pari passu securities having a later scheduled maturity date until the principal of and all accrued and unpaid interest on the Notes has been paid in full.

Section 2.7 *Option to Defer Interest*

(a) So long as no Event of Default has occurred and is continuing, the Company shall have the right at any time and from time to time prior to the Maturity Date to defer payment of interest on the Note, for up to 28 consecutive quarterly Interest Periods, i.e. seven years after the commencement of such Extension Period (or the equivalent thereof, if the Interest Periods are not then quarterly), with respect to each deferral period (each an "*Extension Period*"), during which Extension Periods the Company shall have the right to make partial payments of interest on any Interest Payment Date, and at the end of which the Company shall pay all interest then accrued and unpaid (together with Compounded Interest thereon to the extent permitted by applicable law); *provided* that no Extension Period shall extend beyond the Maturity Date of the principal of the Note, and each Extension Period shall end on a date that is an Interest Payment Date. Prior to the termination of any such Extension Period, the Company may further extend the interest payment period, *provided* that no Extension Period shall exceed 28 consecutive quarterly Interest Periods (or the equivalent thereof if this Note is not then bearing interest quarterly) or extend beyond the Maturity Date of the principal of the Note.

(b) During any such Extension Period (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, (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 the security being converted or exchanged or (iv) payment by the Company under any guarantee agreement executed for the benefit of the holders of the HITS); (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 Notes; and (c) the Company shall not make any payment under any guarantee that ranks equally with or junior to the guarantee agreement executed for the benefit of the holders of the HITS.

(c) An Extension Period shall terminate upon the payment on any Interest Payment Date of all deferred interest and any Compounded Interest then due, and the Company may elect to begin a new Extension Period, subject to the above requirements.

(d) The Company may elect to pay interest on any Interest Payment Date during any Extension Period to the extent permitted by Section 2.8.

(e) Upon the termination of any such Extension Period and upon the payment of all accrued and unpaid interest then due, the Company may elect to begin a new Extension Period, subject to the above requirements. Subject to the last sentence of this paragraph, no

interest shall be due and payable during an Extension Period except at the end thereof. If the Notes are registered in the name of the Property Trustee, the Company will give the Property Trustee, the Delaware Trustee, the Regular Trustees and the Trustee written notice of its election to defer interest payments at least one Business Day before the earlier of (i) the next succeeding Interest Payment Date and (ii) the date the Trust is required to give notice to the New York Stock Exchange or any other exchange on which the HITS are listed or any other applicable self-regulatory organization, if any, of the record date or payment date for the related distribution (however, in no event shall notice be required more than 15 Business Days prior to an Interest Payment Date). The Trustee shall give notice of the Company's election to begin or extend any Extension Period to the Property Trustee as holder of the Notes, to the Regular Trustees and to the holders of the Corporate HITS, and if such election is made prior to the Stock Purchase Date or, if earlier, the Remarketing Settlement Date, to the holders of the Preferred HITS. If the Notes are not registered in the name of the Property Trustee, the Company will give the holders of the Notes and the Trustee written notice of its election to defer interest payments at least ten Business Days before the earlier of (i) the next succeeding Interest Payment Date and (ii) the date the Trust is required to give notice of the record date or payment date of such interest payment to the New York Stock Exchange or any other exchange on which the Notes or the HITS are listed or any other applicable self-regulatory organization, or to the holders of the Notes (however, in no event shall notice be required more than 15 Business Days prior to an Interest Payment Date).

(f) If an Extension Period is in effect on the Stock Purchase Date and there is a Failed Remarketing, then the Company will pay the holder of the Note the deferred interest on the Stock Purchase Date in subordinated notes that (i) have a principal amount equal to the aggregate amount of deferred interest as of the Stock Purchase Date, (ii) mature on the later of March 15, 2015 and five years after commencement of the related deferral period, (iii) bear interest at a floating rate *per annum* equal to Three-Month LIBOR plus 0.25%, (iv) are subordinate and rank junior in right of payment and upon liquidation to all of the Company's Senior Obligations on the same basis as the Notes and (v) are redeemable by the Company at any time prior to their stated maturity, and the restrictions set forth in the first sentence of this paragraph shall remain in effect until the Company has paid in full all amounts outstanding under such notes; *provided*, that the Company shall register such subordinated notes under the Securities Act prior to the delivery thereof to the Property Trustee unless they may be so delivered pursuant to an exemption from registration thereunder, as set forth in an Opinion of Counsel delivered to the Trustee and the Property Trustee.

Section 2.8 *Payment of Deferred Interest.*

(a) The Company covenants and agrees with each holder of the Notes that if it defers payment of interest on any Interest Payment Date on or prior to the Stock Purchase Date, then (i) the Company shall notify the Federal Reserve if this covenant is applicable, (ii) the Company will pay deferred interest only out of Eligible Proceeds, and (iii) commencing with the date two years after the beginning of such Extension Period, the Company shall, subject to the approval of the Federal Reserve, continuously use its Commercially Reasonable Efforts to sell shares of common stock or non-cumulative perpetual preferred stock not later than the termination of such Extension Period in an amount so that the net proceeds of such sale, when applied to such deferred interest payments, will cause such unpaid deferred interest payments to

be paid in full and (unless the Federal Reserve instructs otherwise) apply the proceeds of such sale to pay the deferred amounts (provided that the Company shall not in any event be required to pay interest on the Notes at a time when the payment of such interest would violate the terms of any securities issued by the Company or any of its subsidiaries or the terms of a contract binding on the Company or any of its subsidiaries); provided, however, that the forgoing covenant shall not apply with respect to any interest on the Notes that is deferred and unpaid as of the date of consummation of any business combination where, immediately following its consummation, more than 50% of the surviving entity's voting stock is owned by the shareholders of the other party to the business combination; provided, further that the surviving entity may pay any deferred and unpaid interest with any available funds on the next Interest Payment Date following the date of consummation of the business combination or if later, at any time within 90 days following the date of consummation of the business combination. For the avoidance of doubt, the Company's failure to raise sufficient Eligible Proceeds, or its use of other sources to fund such deferred interest payments subject to the foregoing covenant, by itself, shall not constitute an Event of Default under the Indenture, and this Thirteenth Supplemental Indenture. Notwithstanding the foregoing, the Company will not be required to pay interest on the Notes at a time when the payment of interest would violate the terms of any securities issued by the Company or one of its subsidiaries or the terms of a contract binding on the Company or one of its subsidiaries.

(b) Notwithstanding Section 2.8(a), if the Company is required to conduct a sale of shares of common stock or non-cumulative perpetual preferred stock in order to pay amounts due and payable under any instruments or other securities that rank pari passu as to interest or distributions with the Notes, then the Company shall apply such proceeds to deferred interest payments on the Notes, on the one hand, and such other pari passu securities, on the other hand, on a ratable basis in proportion to the total amounts that are due on the Notes and such securities before the Company shall be relieved of its obligation to conduct the sale of the common stock or non-cumulative perpetual preferred stock and apply the proceeds thereof to such securities.

(c) If the Company issues subordinated notes in respect of deferred interest payments pursuant to Section 2.7(f), Sections 2.8(a) and (b) will apply to the payment of interest on and principal of these subordinated notes except that references to termination of the Extension Period shall instead be to the maturity date of these subordinated notes.

Section 2.9 *Alternative Payment Mechanism.*

The Company shall provide notice to the Federal Reserve at least ten Business Days prior to the APM Commencement Date. Immediately following any APM Commencement Date and until the termination of the related Extension Period, the Company, except to the extent that the Federal Reserve shall have disapproved, shall use Commercially Reasonable Efforts to issue common stock and non-cumulative perpetual preferred stock until the Company has raised an amount of Eligible Proceeds at least equal to the aggregate and unpaid amount of deferred interest on the Notes (including Compounded Interest thereon) and applied such Eligible Proceeds on the next Interest Payment Date to the payment of deferred interest (including Compounded Interest thereon) in accordance with Section 2.8; *provided* that:

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

(b) to the extent that the Company has raised some but not all Eligible Proceeds necessary to pay all deferred interest (including Compounded Interest thereon) on any Interest Payment Date pursuant to this Section 2.9, such Eligible Proceeds shall be applied in accordance with Section 2.8.

Section 2.10 *Events of Default*

(a) For purposes of the Notes (but not for purposes of any other Securities unless specifically set forth in the terms of such Securities), if one or more of the following shall occur and be continuing, such event shall constitute an "Event of Default" with respect to the Notes under the Base Indenture and this Thirteenth Supplemental Indenture:

(i) 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;

(ii) 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;

(iii) As long as the Notes are held by or on behalf of the Trust, the Trust shall have voluntarily or involuntarily dissolved, wound-up its business or otherwise terminated its existence except in connection with (i) the distribution of the Notes to holders of the Trust Securities in liquidation of their interests in the Trust; (ii) the redemption of all of the outstanding Trust Securities of the Trust; or (iii) certain mergers, consolidations or amalgamations, each as permitted by the Declaration; or

(iv) The Company shall fail to pay interest due in respect of the Notes for a period of 30 days after 28 consecutive quarterly Interest Periods (or the equivalent thereof, if the Notes are not then bearing interest quarterly).

(b) If an Event of Default with respect to the Notes at the time outstanding occurs and is continuing, then unless the principal of all of the Notes shall have already become due and payable, the Trustee or the holders of not less than 25% in aggregate principal amount of the outstanding Notes may declare the entire principal amount of and all accrued but unpaid interest on the Notes to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by holders), *provided* that, in the case of Notes issued to and held by the Trust, or any trustee thereof or agent therefor, if upon an Event of Default, the Trustee or the holders of not less than 25% in aggregate principal amount of the outstanding Notes fails to declare the entire principal and all accrued but unpaid interest of all the Notes to be immediately due and payable, the holders of at least 25% in aggregate liquidation amount of the Corporate HITS and, if such declaration occurs prior to the Stock Purchase Date or, if earlier, the Remarketing Settlement Date, the Preferred HITS then outstanding, acting together as a single class, shall have such right by a notice in writing to the Company and the Trustee. Upon any such declaration, such amount of the principal of and the accrued but unpaid interest on all the Notes shall become immediately due and payable, *provided* that the payment of principal and interest on the Notes shall remain subordinated to Senior Obligations to the extent provided in Article 15 of the Base Indenture except to the extent otherwise determined in connection with an Early Remarketing. Upon payment (i) of the amount of principal so declared due and payable and (ii) of interest on any overdue principal and overdue interest (in each case to the extent that the payment of such interest shall be legally enforceable), all of the Company's obligations in respect of the payment of the principal of and interest on the Notes shall terminate.

Section 2.11 *Notice of Defaults; Amount Payable upon Acceleration.*

So long as any Notes are held by or on behalf of the Trust, the Trustee shall provide to the holders of the Preferred HITS, Trust Common Securities and Corporate HITS such notices as it shall from time to time provide under Section 5.08 of the Base Indenture. In addition, the Trustee shall provide to the holders of the Preferred HITS, Trust Common Securities and Corporate HITS notice of any Event of Default or event that, with the giving of notice or lapse of time, or both, would become an Event of Default with respect to the Notes within 30 days after the actual knowledge of a Responsible Officer of the Trustee of such Event of Default or other event.

Section 2.12 *Securities Registrar; Paying Agent; Delegation of Trustee Duties.*

The Company appoints The Bank of New York Trust Company, N.A., as securities registrar (the "*Securities Registrar*") and Paying Agent with respect to the Notes for so long as it shall act as Collateral Agent and Custodial Agent under the Collateral Agreement and has custody of the Notes in either of such capacities.

ARTICLE III

REMARKETING AND RATE RESET PROCEDURES

Section 3.1 *Obligation to Conduct Remarketing and Related Requirements*.

(a) The Company shall appoint the Remarketing Agent and enter into a Remarketing Agreement prior to the first Remarketing to effect the Remarketing of the Notes upon the terms, conditions and other provisions provided therein and in the Declaration and the Collateral Agreement.

(b) The Remarketing Agreement shall provide that the Company and the Remarketing Agent agree to use commercially reasonable efforts to effect the Remarketing of the Notes as described in this Article III, and in connection therewith, the Remarketing Agent will use its commercially reasonable efforts to obtain a price for all the Remarketed Notes that results in proceeds, net of any remarketing fee, of at least 100% of their aggregate Remarketing Value. If in the judgment of counsel to the Company or the Remarketing Agent it is necessary for a registration statement covering the Notes to be filed and become effective under the Securities Act in order to effect the Remarketing, then the Company shall (i) use commercially reasonable efforts to ensure that a registration statement covering the full principal amount of Notes to be remarketed shall become effective in a form that will enable the Remarketing Agent to rely on it in connection with the Remarketing or (ii) effect such Remarketing pursuant to Rule 144A (if available) under the Securities Act or another available exemption from the registration requirements under the Securities Act.

Section 3.2 *Company Decisions in Connection with Remarketing*.

In connection with Remarketings, the Company shall have the right hereunder, subject to Section 3.3(a), without the consent of any holder of the Notes, to change certain terms of the Notes as provided below in this Section 3.2 in order to obtain the Remarketing Value. By not later than the 21st calendar day prior to each Remarketing Date, the Company will specify the following information or decisions in a notice to the Remarketing Agent, the Collateral Agent, the Custodial Agent, the Property Trustee (on behalf of the Trust) and the Trustee (clauses (a) through (e) applying only if the Remarketing is Successful and clause (f) applying only in the case of a Failed Remarketing):

(a) whether the Maturity Date will remain at March 15, 2043 or will be changed to an earlier date (specifying such date if applicable); *provided* that the Maturity Date may not be changed to a date earlier than the earlier of (i) March 15, 2017 and (ii) if the Remarketing Settlement Date occurs during an Extension Period, the seventh anniversary of the first day of such Extension Period;

(b) whether to change the date after which the Notes will be redeemable at the Company's option and the redemption price or prices; *provided* that no redemption date for the Notes, except in the case of a Tax Event, a Capital Treatment Event or an Investment Company Event, may be earlier than the earlier of (i) March 15, 2017 and (ii) if the Remarketing Settlement Date occurs during an Extension Period, the seventh anniversary of the first day of

such Extension Period; and provided, further, that if the Remarketing Settlement Date occurs during an Extension Period no redemption price may be less than the principal plus accrued and unpaid interest (including Compounded Interest) on the Notes;

(c) whether in connection with an Early Remarketing that is not the first scheduled Remarketing, the Company is exercising its right under Section 7.2 to cause the subordination provisions in the Base Indenture and this Thirteenth Supplemental Indenture to cease to apply to the Notes, if the Remarketing is Successful, from and after the Remarketing Settlement Date and if so, whether it also elects that the Notes shall no longer be subject to the interest deferral provisions of Section 2.7;

(d) whether the Notes will be remarketed as fixed rate notes or floating rate notes;

(e) if the Notes will be remarketed as floating rate notes, the applicable index (which must be a qualified floating rate) and the interest payment dates and manner of calculation of interest on the Notes, which the Company may change to correspond with the market conventions applicable to notes bearing interest at rates based on the applicable index; and

(f) whether following a Failed Remarketing:

(i) the Maturity Date will remain at March 15, 2043 or will be changed to an earlier date, which date shall not be earlier than March 15, 2017 (specifying such date if applicable); and

(ii) the date after which the Notes will be redeemable at the Company's option will be changed (which date shall not be earlier than March 15, 2017, except in the case of a Tax Event, a Capital Treatment Event or an Investment Company Event) and the redemption price or prices;

provided that if the Failed Remarketing occurs during an Extension Period any changed Maturity Date of the Notes determined pursuant to clause (i) or early redemption date determined pursuant to clause (ii) may not be earlier than the seventh anniversary of the first day of such Extension Period.

Any such elections made by the Company pursuant to clauses (a) through (e) shall, upon Successful completion of a Remarketing, automatically apply and come into effect in respect of all of the Notes (whether or not sold in the Remarketing) as of the Remarketing Settlement Date and any such elections made by the Company pursuant to clause (f) in connection with a Failed Remarketing shall come into effect in respect of the Notes upon the announcement by the Company that the Final Remarketing is a Failed Remarketing.

Section 3.3 *Reset of Interest Rate in Connection with Remarketings and Related Changes in Terms*

(a) As part of and in connection with each Remarketing, the Remarketing Agent shall determine the Reset Rate or Reset Spread on the Notes, subject to Sections 3.3(b)

through (e), pursuant to the Remarketing Agreement and in accordance with the other provisions of this Article III, that will apply to all Notes (whether or not sold in the Remarketing) if such Remarketing is Successful for each Interest Period or portion thereof commencing on or after such Remarketing Settlement Date, subject to the following provisions and limitations:

(i) in connection with a Remarketing that is not a Final Remarketing, (A) if the Notes are remarketed as fixed rate notes, the Reset Rate may not exceed the Fixed Rate Reset Cap and (B) if the Notes are remarketed as floating rate notes, the Reset Spread may not exceed the Floating Rate Reset Cap;

(ii) the interest rate on the Notes may not at any time be less than 0% per annum; and

(iii) if (A) the interest rate on the Notes is not a fixed rate or for a floating rate note the applicable index is not a "qualified floating rate" (as defined in U.S. Treasury regulations section 1.1275-5(b)), (B) interest on the Notes is not unconditionally payable at intervals of no more than one year through the remaining term of the Notes, or (C) the redemption price of the Notes is not their principal amount (disregarding a customary call premium that is fixed or objectively determinable based on a qualified floating rate), then the Company shall have received a written opinion of Morrison & Foerster LLP or other nationally recognized tax counsel experienced in such matters to the effect that the discussion contained in the Prospectus under the heading "Certain U.S. Federal Income Tax Consequences" is materially correct, taking into account all of the terms of the Notes following the Remarketing.

(b) If the Remarketing has been determined to be Successful in accordance with Section 3.5(a), by approximately 4:30 P.M., New York City time, on such Remarketing Date, the Remarketing Agent shall notify the Company, the Collateral Agent, the Custodial Agent, the Property Trustee (on behalf of the Trust) and the Trustee that the Remarketing was Successful and the Reset Rate or Reset Spread and any new Maturity Date or redemption provisions determined as part of such Remarketing in accordance with this Article III.

(c) If a Remarketing is Successful, then commencing with the related Remarketing Settlement Date the interest rate on the Notes shall be reset to the rate, determined in accordance with this Article III pursuant to such Remarketing and the other changes, if any, in the terms of the Notes as notified by the Company pursuant to Section 3.2, shall become effective in accordance with this Article III.

(d) If a Remarketing other than the Final Remarketing is not Successful:

(i) no Notes will be sold in such Remarketing;

(ii) the interest rate will remain unchanged unless and until it is reset pursuant to a subsequent Remarketing in accordance with this Article III;

(iii) the other changes, if any, in the terms of the Notes, as notified by the Company pursuant to Section 3.2, shall not become effective; and

(iv) the Company and the Remarketing Agent shall attempt another Remarketing beginning on the next Remarketing Date.

(e) Upon the occurrence of a Failed Remarketing:

(i) no Notes will be sold in such Remarketing and no further attempts at Remarketing shall be made;

(ii) the interest rate will remain unchanged and the Notes will continue to bear interest at the interest rate otherwise in effect, payable on the dates set forth in the Notes, subject to Section 2.5(b);

(iii) the other changes, if any, in the terms of the Notes as notified by the Company pursuant to clauses (a) through (e) of the second sentence of Section 3.2, shall not become effective;

(iv) the Maturity Date and early redemption date for the Notes will change in accordance with clause (f) of the second sentence of Section 3.2, as applicable;

(v) in the case of Notes corresponding to Preferred HITS and Trust Common Securities, such Notes will be applied in satisfaction of the Trust's obligations under Stock Purchase Contracts in accordance with the Collateral Agreement; and

(vi) in the case of Notes corresponding to Corporate HITS, such Notes will be returned to the Custodial Agent in accordance with the Collateral Agreement.

Section 3.4 *Early Remarketing.*

If an Early Settlement Event occurs prior to the Stock Purchase Date, the Remarketing Dates shall be the seventh Business Day prior to February 15, May 15, August 15 or November 15, commencing on the first such date that is at least 30 days after the occurrence of such Early Settlement Event, and concluding with the earlier to occur of the fifth such date and a Successful Remarketing; provided that in the case of an Early Settlement Event of the type described in clause (v) of the definition of such term, (1) there shall be only one Remarketing Date, (2) the Reset Rate or Reset Spread shall not be subject to the Fixed Rate Reset Cap or Floating Rate Reset Cap, as the case may be, and (3) if the Remarketing conducted on such date is not Successful, it shall be a Failed Remarketing and the Stock Purchase Date shall be the next succeeding March 15, June 15, September 15 or December 15 (or if such day is not a Business Day, the next Business Day).

Section 3.5 *Company Announcements.*

(a) If by 4:00 P.M., New York City time, on any day during a Remarketing Period the Remarketing Agent has found buyers for all of the Notes offered in the Remarketing in accordance with this Article III, a "*Successful*" Remarketing shall be deemed to have occurred. In the event of a Successful Remarketing, the Company shall issue a press release through Bloomberg Business News or other reasonable means of distribution stating that such Remarketing was Successful and specifying the Reset Rate or Reset Spread and any new Maturity Date or redemption provisions and shall post such information on its website on the World Wide Web.

(b) If, by 4:00 P.M., New York City time, the final day of a Remarketing Period the Remarketing Agent is unable to find buyers for all of the Notes offered in such Remarketing, including any Remarketing that would qualify as a Final Remarketing, in accordance with this Article III, an "*Unsuccessful*" Remarketing shall be deemed to have occurred. In the event of an Unsuccessful Remarketing, the Company shall issue a press release through Bloomberg Business News or other reasonable means of distribution stating that such Remarketing was an Unsuccessful Remarketing, and publish such information on its website.

Section 3.6 *Supplemental Indenture*.

Notwithstanding any provision of the Base Indenture to the contrary, the Company and the Trustee may enter into a supplemental indenture without the consent of any holder of the Notes to reflect any modifications to the terms of the Notes pursuant to the terms of this Article III and to provide for the exchange of the Notes for Notes in the form reflecting such modifications and adopted pursuant to such supplemental indenture.

ARTICLE IV EXPENSES

Section 4.1 *Expenses*.

In connection with the offering, sale and issuance of the Notes to the Property Trustee on behalf of the Trust and in connection with the sale of the Trust Securities by the Trust, the Company, in its capacity as borrower with respect to the Notes, shall:

(a) pay all costs and expenses relating to the offering, sale and issuance of the Notes, including commissions to the underwriters payable pursuant to the Underwriting Agreement and compensation of the Trustee under the Indenture in accordance with the provisions of Section 6.06 of the Indenture; and

(b) be responsible for and shall pay all debts and obligations (except for any amounts owed to holders of the HITS in their respective capacities as holders) and all costs and expenses of the Trust (including, but not limited to, costs and expenses relating to the organization, maintenance and dissolution of the Trust, the offering, sale and issuance of the Trust Securities (including commissions to the underwriters in connection therewith), the fees and expenses (including reasonable counsel fees and expenses) of the Property Trustee, the Delaware Trustee, the Regular Trustees, the Securities Registrar, and the Paying Agent, the costs and expenses relating to the operation of the Trust, including, without limitation, costs and expenses of accountants, attorneys, statistical or bookkeeping services, expenses for printing and engraving and computing or accounting equipment, paying agent(s), registrar(s), transfer agent(s), duplicating, travel and telephone and other telecommunications expenses and costs and expenses incurred in connection with the acquisition, financing, and disposition of Trust assets and the enforcement by the Property Trustee of the rights of the holders of the Notes and the holders of the HITS).

ARTICLE V

FORM OF NOTE

Section 5.1 *Form of Notes*.

The Notes are to be substantially in the following form and shall bear any legend required by Sections 2.01 and 2.11 of the Base Indenture:

[IF THE NOTE IS TO BE A GLOBAL NOTE, INSERT—This Note is a Global Note within the meaning of the Indenture hereinafter referred to and is registered in the name of The Bank of New York, as Property Trustee of BAC Capital Trust XIII (the "Trust"). This Note is exchangeable for Notes registered in the name of a person other than The Bank of New York, as Property Trustee of BAC Capital Trust XIII, or its nominee only in the limited circumstances described in the Indenture, and no transfer of this Note may be registered except in limited circumstances.

Unless this Note is presented by an authorized representative of The Depository Trust Company, New York ("DTC") to the issuer or its agent for registration of transfer, exchange or payment, and any Note issued is registered in the name of CEDE & CO. or such other name as requested by an authorized representative of DTC (and any payment hereon is made to Cede & Co. or such other entity as is requested by an authorized representative of DTC), 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 NOTE 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.

$_____ CUSIP No. _____
ISIN No. _____

No. XIII-R-__

BANK OF AMERICA CORPORATION

REMARKETABLE FLOATING RATE JUNIOR SUBORDINATED NOTE DUE 2043

BANK OF AMERICA CORPORATION, a corporation organized and existing under the laws of Delaware (hereinafter called the "*Company*", which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay to **THE BANK OF NEW YORK, AS PROPERTY TRUSTEE OF BAC CAPITAL TRUST XIII**, or registered assigns, the principal sum of _____ Dollars ($_____) on March 15, 2043 or such earlier date as may be specified by the Company following a Remarketing (such date is hereinafter referred to as the "*Maturity Date*").

The Company further promises to pay interest on said principal sum from February 16, 2007, or from the most recent interest payment date (each such date, an "*Interest Payment Date*") on which interest has been paid or duly provided for (subject to deferral as set forth herein), quarterly in arrears on March 15, June 15, September 15 and December 15 of each year, commencing June 15, 2007, and on the Stock Purchase Date in the event of a Failed Remarketing if not otherwise an Interest Payment Date, at a floating rate equal to Three-Month LIBOR, then in effect on the applicable interest determination date, plus 0.25% (or after the Remarketing Settlement Date at such rate per annum as may be established in the Remarketing), until the principal hereof is paid or duly provided for or made available for payment. The amount of interest payable for any period shall be calculated on the basis of a 360-day year and the number of days that have actually elapsed. In the event that any date on which interest is payable on this Note is not a Business Day, then payment of the interest payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay), with the same force and effect as if made on the date the payment was originally payable. A "*Business Day*" shall mean any day other than a Saturday, Sunday, or any other day on which banking institutions and trust companies in New York, New York or Charlotte, North Carolina, are permitted or required by any applicable law to close. The interest installment so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture, be paid to the person in whose name this Note (or one or more Predecessor Securities, as defined in the Indenture) is registered at the close of business on the regular record date for such interest installment, which shall be the close of business on the business day next preceding such Interest Payment Date. IF PURSUANT TO THE PROVISIONS OF THE INDENTURE THE NOTES ARE NO LONGER HELD BY THE PROPERTY TRUSTEE OR NO LONGER REPRESENTED BY A GLOBAL NOTE, the record date shall be the close of business on the last day of the month immediately preceding the month in which the Interest Payment Date falls. Any such interest installment not punctually paid or duly provided for shall forthwith cease to be payable to the registered holders on such regular record date and may be paid to the Person in whose name this Note (or one or more Predecessor Securities) is registered at the close of business on a special record date to be fixed by the Trustee (as hereinafter defined) for the payment of such defaulted interest, notice whereof shall be given to the registered holders of this series of Notes not less than ten days prior to such special record date, or may be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Notes may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture.

The principal of (and premium, if any) and the interest on this Note shall be payable at the office or agency of the Trustee maintained for that purpose in any coin or currency of the United States of America that at the time of payment is legal tender for payment of public and private debts; provided, however, that payment of interest may be made at the option of the Company by check mailed to the registered holder at such address as shall appear in the Security Register. Notwithstanding the foregoing, so long as the holder of this Note is the Property Trustee, the payment of the principal of (and premium, if any) and interest on this Note will be made at such place and to such account as may be designated by the Property Trustee. Notwithstanding the foregoing, so long as the holder of this Note is the Property Trustee, the

payment of the principal of and interest (including expenses and taxes of BAC Capital Trust XIII set forth in Section 4.1 of the Thirteenth Supplemental Indenture, if any) on this Note will be made at the Paying Agent Office or at such place and to such account as may be designated in writing by the Property Trustee. This Note may be presented for registration of transfer or exchange at the Securities Registrar Office.

If the principal amount hereof or any portion of such principal amount is not paid when due (whether upon acceleration, upon the date set for payment of the redemption price as provided in the Indenture or upon the Maturity Date) or if interest due hereon (or any portion of such interest), is not paid when due, then in each such case the overdue amount shall, to the extent permitted by law, bear interest at the rate then borne by this Note for the applicable Interest Period, compounded at the end of such Interest Period ("Compounded Interest"), which interest shall accrue from the date such overdue amount was originally due to the date payment of such amount, including interest thereon, has been made or duly provided for. All such interest shall be payable as set forth in the Indenture.

The indebtedness evidenced by this Note is, to the extent provided in the Indenture, subordinate and junior in right of payment and upon liquidation to the prior payment in full of all Senior Obligations, and this Note is issued subject to the provisions of the Indenture with respect thereto; *provided* that, in connection with an Early Remarketing that is not the first scheduled Remarketing, the Company may elect that effective on or after the Remarketing Settlement Date the indebtedness evidenced by this Note shall cease to be subordinate and junior in right of payment and upon liquidation to the prior payment in full of all Senior Obligations. Each holder of this Note, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on its behalf to take such actions as may be necessary or appropriate to effectuate the subordination so provided and (c) appoints the Trustee its attorney-in-fact for any and all such purposes. Each holder hereof, by its acceptance hereof, waives all notice of the acceptance of the subordination provisions contained herein and in the Indenture by each holder of Senior Obligations, whether now outstanding or hereafter incurred, and waives reliance by each such holder upon said provisions.

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

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

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

BANK OF AMERICA CORPORATION

By: _____

CERTIFICATE OF AUTHENTICATION

This is one of the Notes of the series designated therein referred to in the within mentioned Indenture.

Dated:

THE BANK OF NEW YORK TRUST COMPANY, N.A.,
not in its individual capacity but solely as Trustee

By: _____
Authorized Signatory

(FORM OF REVERSE OF NOTE)

This Note is one of a duly authorized series of Notes of the Company (herein called the "*Notes*") specified in the Indenture and issued or to be issued in one or more series under the Restated Junior Subordinated Debt Securities Indenture dated as of November 1, 2001 (herein called the "*Base Indenture*"), between the Company and The Bank of New York Trust Company, N.A., as successor to The Bank of New York (herein called the "*Trustee*"), as amended and supplemented, and as further amended and supplemented by the Thirteenth Supplemental Indenture, dated as of February 16, 2007, between the Company and the Trustee (the "*Thirteenth Supplemental Indenture*," and together with the Base Indenture, the "*Indenture*"), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Trustee, the Company and the holders of the Notes, and of the terms upon which the Notes are, and are to be, authenticated and delivered. By the terms of the Indenture, the Securities are issuable in series that may vary as to amount, date of maturity, rate of interest, rank and in other respects as provided in the Indenture. This series of Notes is limited in aggregate principal amount as specified in the Thirteenth Supplemental Indenture.

Subject to the prior approval of the Federal Reserve, the Company may at any time, at its option, redeem this Note (a) in whole but not in part, within 90 days after a Tax Event, Capital Treatment Event or an Investment Company Event or (b) in whole at any time or in part from time to time on or after March 15, 2017 (or such later date as may be specified by the Company in connection with a Remarketing), and in either case subject to the terms and conditions of Article 14 of the Base Indenture and Section 2.6 of the Thirteenth Supplemental Indenture, without premium or penalty, at a redemption price equal to 100% of the principal amount hereof plus accrued and unpaid interest to the Redemption Date.

In the event of redemption of this Note in part only, a new Note or Notes of this series for the portion hereof not prepaid will be issued in the name of the holder hereof upon the cancellation hereof.

Subject to the limitations described in Sections 2.7 and 2.8 of the Thirteenth Supplemental Indenture, and so long as no Event of Default has occurred and is continuing, the Company shall have the right at any time and from time to time prior to the Maturity Date to defer payment of interest on this Note, for up to 28 consecutive quarterly Interest Periods, i.e. seven years after the commencement of such Extension Period (or the equivalent thereof, if the Interest Periods are not then quarterly), with respect to each Extension Period, during which Extension Periods the Company shall have the right to make partial payments of interest on any Interest Payment Date, and at the end of which the Company shall pay all interest then accrued and unpaid (together with Compounded Interest thereon to the extent permitted by applicable law); *provided* that no Extension Period shall extend beyond the Maturity Date of the principal of this Note, and each Extension Period shall end on a date that is an Interest Payment Date. Prior to the termination of any such Extension Period, the Company may further extend the interest payment period, *provided* that no Extension Period shall exceed 28 consecutive quarterly Interest Periods (or the equivalent thereof if this Note is not then bearing interest quarterly) or extend beyond the Maturity Date of the principal of this Note.

No sinking fund is provided for the Notes.

This Note shall be remarketed as provided in the Indenture. In connection therewith, the Company may change the Maturity Date, the date after which this Note may be redeemed in whole or in part prior to the Maturity Date at the option of the Company, the rate of interest payable on this Note, the Interest Payment Dates, the manner of calculating interest on this Note and certain other provisions of the Notes, all as set forth in the Indenture and without the consent of any holder of this Note.

The Indenture contains provisions for satisfaction and discharge of the entire indebtedness of this Note upon compliance by the Company with certain conditions set forth in the Indenture.

The Indenture contains provisions permitting the Company and the Trustee, with the consent of the holders of not less than a majority in aggregate principal amount of the securities of each series affected at the time outstanding, as defined in the Indenture, voting as a class, to execute supplemental indentures for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or of any supplemental indenture or of modifying in any manner the rights of the holders of the Notes; provided, however, that no such supplemental indenture shall (i) extend the fixed maturity of any Note (except as set forth in the terms of the Notes), 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 Notes, or impair or affect the right of any holder of Notes 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 Note so affected, or (ii) reduce the aforesaid percentage of Notes, the holders of which are required to consent to any such supplemental indenture, without the consent of the holders of each Note then outstanding and affected thereby. The Indenture also contains provisions permitting the holders of a majority in aggregate principal amount of the Notes at the time outstanding affected thereby, on behalf of all of the holders of the Notes, to waive any past default or Event of Default prior to a declaration of acceleration other than (i) a default in the payment of principal of, premium, if any, or interest on the Notes, (ii) a default in respect of covenants that cannot be modified or amended without the consent of each holder of the Notes, or (iii) a default in respect of the covenant contained in Section 2.7(b) of the Thirteenth Supplemental Indenture. Any such consent or waiver by the registered holder of this Note (unless revoked as provided in the Indenture) shall be conclusive and binding upon such holder and upon all future holders and owners of this Note and of any Note issued in exchange herefor or in place hereof (whether by registration of transfer or otherwise), irrespective of whether or not any notation of such consent or waiver is made upon this Note.

As provided in and subject to the provisions of the Indenture, if an Event of Default with respect to the Notes at the time outstanding occurs and is continuing, then in each and every such case the Trustee or the holders of not less than 25% in principal amount of the outstanding Notes may declare the entire principal amount of and all accrued but unpaid interest on the Notes to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by holders), *provided* that, in the case of Notes issued to and held by BAC Capital Trust XIII, or

any trustee thereof or agent therefor, if upon an Event of Default, the Trustee or the holders of not less than 25% in principal amount of the outstanding Notes fails to declare the entire principal and all accrued but unpaid interest of all the Notes to be immediately due and payable, the holders of at least 25% in aggregate liquidation amount of the Corporate HITS and, if such declaration occurs prior to the Stock Purchase Date or, if earlier, the Remarketing Settlement Date, the holders of the Preferred HITS then outstanding, acting together as a single class, shall have such right by a notice in writing to the Company and the Trustee. Upon any such declaration, such amount of the principal of and the accrued but unpaid interest on all the Notes shall become immediately due and payable, *provided* that the payment of principal and interest on the Notes shall remain subordinated to Senior Obligations to the extent provided in Article 15 of the Base Indenture except to the extent otherwise determined in connection with an Early Remarketing. Upon payment (i) of the amount of principal so declared due and payable and (ii) of interest on any overdue principal and overdue interest (in each case to the extent that the payment of such interest shall be legally enforceable), all of the Company's obligations in respect of the payment of the principal of and interest on this Note shall terminate.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and premium, if any, and interest on this Note at the time and place and at the rate and in the money herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Note is registrable in the Securities Register, upon surrender of this Note for registration of transfer at the office or agency of the Company maintained under Section 3.02 of the Base Indenture duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Securities Registrar (as defined in the Thirteenth Supplemental Indenture) duly executed by, the holder hereof or his attorney duly authorized in writing, and thereupon one or more new Notes of such series, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees. No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment of this Note for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee designated under Section 3.02 of the Base Indenture shall treat the Person in whose name this Note is registered as the owner hereof for all purposes, whether or not this Note be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

No recourse shall be had for the payment of the principal of or the interest on this Note, or for any claim based hereon, or otherwise in respect hereof, or based on or in respect of the Indenture, against any incorporator, stockholder, officer or director, past, present or future, as such, of the Company or of any predecessor or successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issuance hereof, expressly waived and released.

[IF THIS IS A GLOBAL NOTE: This Global Note is exchangeable for Notes in definitive form only under limited circumstances set forth in the Indenture.] Notes of this series are issuable only in registered form without coupons in minimum denominations of $1,000 and any integral multiples of $1,000 in excess thereof. As provided in the Indenture and subject to certain limitations herein and therein set forth, Notes of this series so issued are exchangeable for a like aggregate principal amount of Notes of this series of a different authorized denomination, as requested by the holder surrendering the same.

The Company and, by its acceptance of this Note or a beneficial interest therein, the holder of, and any Person that acquires a beneficial interest in, this Note agree that for United States Federal, state and local tax purposes it is intended that this Note constitute indebtedness.

THE INTERNAL LAWS OF THE STATE OF NEW YORK SHALL GOVERN THE INDENTURE AND THE NOTES WITHOUT REGARD TO CONFLICTS OF LAWS PROVISIONS THEREOF.

All terms used in this Note that are defined in the Indenture shall have the meanings assigned to them in the Indenture.

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

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Note to:

_____

_____

_____

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

_____

_____

_____

(Insert address and zip code of assignee)

agent to transfer this Note on the books of the Securities Registrar. The agent may substitute another to act for him or her.

Dated: Signature:
Signature Guarantee:

(Sign exactly as your name appears on the other side of this Note)

Signatures must be guaranteed by an "*eligible guarantor institution*" meeting the requirements of the Securities Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("*STAMP*") or such other

"*signature guarantee program*" as may be determined by the Securities Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

ARTICLE VI

ORIGINAL ISSUE OF NOTES

Section 6.1 *Original Issue of Notes*.

Notes in the aggregate principal amount of up to $1,200,100,000 may, upon execution of this Thirteenth Supplemental Indenture, be executed by the Company and delivered to the Trustee or an Authenticating Agent for authentication, and the Trustee or an Authenticating Agent shall thereupon authenticate and deliver said Notes in accordance with a Company Order.

Section 6.2 *Calculation of Original Issue Discount.*

If during any calendar year any original issue discount shall have accrued on the Notes, the Company shall file with each Paying Agent (including the Trustee if it is a Paying Agent) promptly at the end of each calendar year (i) a written notice specifying the amount of original issue discount (including daily rates and accrual periods) accrued on outstanding Securities as of the end of such year and (ii) such other specific information relating to such original issue discount as may then be relevant under the Internal Revenue Code of 1986, as amended from time to time.

ARTICLE VII

SUBORDINATION

Section 7.1 *Senior Obligations.*

(a) The subordination provisions of Article 15 of the Indenture shall apply; provided that for purposes of the Notes (but not for purposes of any other Securities unless specifically set forth in the terms of such Securities), the definition of "Senior Obligations" in the Indenture is hereby deleted in its entirety and replaced by the following:

"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 (including junior subordinated debt securities and guarantees issued by the Company or its predecessor entities with respect to any existing or future trust preferred securities under the Indenture or otherwise); (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); provided that "Senior Obligations" shall not include any such indebtedness (including without limitation any junior subordinated debt securities and guarantees) that is by its terms subordinated to or *pari passu* with the Notes, including any such indebtedness that the Federal Reserve authorizes for inclusion in Tier 1 capital, all limited to the extent that the classification of such indebtedness as ranking subordinated to or equally with the Notes is authorized under the capital rules of the Federal Reserve."

(b) The Notes shall rank *pari passu* with: (i) the Company's Remarketable Fixed Rate Notes due 2043, (ii) the Company's Guarantee in respect of the HITS, (iii) the Company's Guarantee in respect of the HITS issued by BAC Capital Trust XIV, (iv) the Company's Guarantee in respect of the Trust Common Securities issued by the Trust, (v) the Company's Guarantee in respect of the Trust Common Securities issued by BAC Capital Trust XIV, (vi) the Stock Purchase Contracts issued by the Company in respect of the HITS pursuant to the Stock Purchase Contract Agreement, and (vii) the stock purchase contracts issued by the Company in respect of the HITS issued by BAC Capital Trust XIV.

Section 7.2 *Company Election to End Subordination.*

The Company may elect, at any time effective on or after the Remarketing Settlement Date in connection with an Early Remarketing of the Notes that is not the first scheduled Remarketing, that its obligations under the Notes shall cease to be subordinated to Senior Obligations, in which case the provisions of Article 15 of the Base Indenture and, if the Company so elects, Section 2.7 hereof and Section 2.13 of the Base Indenture, shall thereafter no longer apply to the Notes, and the Notes shall cease to constitute pari passu securities with any other securities that by their terms have been deemed to rank equally with the Notes. The Company shall give the Trustee notice of any such election not later than the effective time, and shall promptly issue a press release through Bloomberg Business News or other reasonable means of distribution.

Section 7.3 *Compliance with Federal Reserve Rules.*

The Company shall not incur any additional indebtedness for borrowed money that ranks pari passu with or junior to the Notes (if then subject to Article 15 of the Base Indenture), except in compliance with applicable regulations and guidelines of the Federal Reserve.

Section 7.4 *Extension of Rights, Privileges, etc.*

Anything contained herein or in the Indenture to the contrary notwithstanding, the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

ARTICLE VIII

MISCELLANEOUS

Section 8.1 *Effectiveness*.

This Thirteenth Supplemental Indenture will become effective upon its execution and delivery.

Section 8.2 *Successors and Assigns*.

All covenants and agreements in the Base Indenture, as supplemented and amended by this Thirteenth Supplemental Indenture, by the Company shall bind its successors and assigns, whether so expressed or not.

Section 8.3 *Further Assurances.*

The Company will, at its own cost and expense, execute and deliver any documents or agreements, and take any other actions that the Trustee or its counsel may from time to time request in order to assure the Trustee of the benefits of the rights granted to the Trustee under the Indenture, as supplemented and amended by this Thirteenth Supplemental Indenture.

Section 8.4 *Effect of Recitals.*

The recitals contained herein and in the Notes, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and neither the Trustee nor any Authenticating Agent assumes any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Notes. Neither the Trustee nor any Authenticating Agent shall be accountable for the use or application by the Company of the Notes or the proceeds thereof.

Section 8.5 *Ratification of Indenture.*

The Base Indenture, as supplemented by this Thirteenth Supplemental Indenture, is in all respects ratified and confirmed, and this Thirteenth Supplemental Indenture shall be deemed part of the Indenture in the manner and to the extent herein and therein provided.

Section 8.6 *Governing Law*.

This Thirteenth Supplemental Indenture and the Notes shall be governed by and construed in accordance with the laws of the State of New York

* * * *

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

IN WITNESS WHEREOF, the parties hereto have caused this Thirteenth Supplemental Indenture to be duly executed, and their respective corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

BANK OF AMERICA CORPORATION

By: /s/ Ann J. Travis
Name: Ann J. Travis
Title: Senior Vice President

THE BANK OF NEW YORK TRUST COMPANY, N.A.,
as Trustee

By: /s/ Tina D. Gonzales
Name: Tina D. Gonzales
Title: Assistant Treasurer

Exhibit 4.7

FOURTEENTH SUPPLEMENTAL INDENTURE

BETWEEN

BANK OF AMERICA CORPORATION

AND

THE BANK OF NEW YORK TRUST COMPANY, N.A.

DATED AS OF FEBRUARY 16, 2007

Supplement to Restated Junior Subordinated Debt Securities Indenture dated as of November 1, 2001, as supplemented

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FOURTEENTH SUPPLEMENTAL INDENTURE, dated as of February 16, 2007 (the "Fourteenth Supplemental Indenture"), between **BANK OF AMERICA CORPORATION**, a Delaware corporation (herein after called the "Company"), having its principal office at 100 North Tryon Street, Charlotte, North Carolina 28255, and **THE BANK OF NEW YORK TRUST COMPANY, N.A.,** a national banking association, as successor Trustee (hereinafter called the "Trustee").

RECITALS OF THE COMPANY

The Company and The Bank of New York, as predecessor trustee, entered into a Restated Junior Subordinated Debt Securities Indenture dated as of November 1, 2001 (the "*Base Indenture*").

Section 9.01 of the Base Indenture provides that the Indenture may be amended or supplemented without the consent of any holder of Securities to provide for the issuance of and establish the form and terms and conditions of any series of Securities.

The Company has delivered to the Trustee an Opinion of Counsel and an Officers' Certificate pursuant to Section 9.05 of the Base Indenture to the effect that all conditions precedent provided for in the Base Indenture to the Trustee's execution and delivery of this Fourteenth Supplemental Indenture have been complied with and that this Fourteenth Supplemental Indenture is permitted under the Base Indenture.

BAC Capital Trust XIV, a Delaware statutory trust (the "*Trust*"), has offered to the public a class of beneficial interests known as 5.63% Fixed to Floating Rate Preferred Hybrid Income Term Securities (such securities being of the type referred to in the Indenture as the "Preferred Securities" and in this Fourteenth Supplemental Indenture as the "*Preferred HITS*"), which Preferred HITS may be exchanged (together with U.S. Treasury securities) for Treasury HITS and Corporate HITS (each, as defined herein, and collectively the Preferred HITS, Treasury HITS and Corporate HITS are referred to as the *"HITS"*), and proposes to invest the proceeds from the offering, together with the proceeds of the issuance and sale by the Trust to the Company of its common securities (the "*Trust Common Securities*" and together with the HITS, the "Trust Securities"), in the Notes (as defined herein).

The Notes will be subject to Remarketing (as defined herein), in connection with which certain terms of the Notes may be changed, all in accordance with the procedures to be set forth in a Remarketing Agreement to be entered into prior to the first Remarketing (as amended or supplemented from time to time, the "*Remarketing Agreement*"), among the Company and the remarketing agent named in the Remarketing Agreement (including any successor or replacement, the "*Remarketing Agent*"), and confirmed and accepted by The Bank of New York, as property trustee of the Trust.

The Company has requested that the Trustee execute and deliver this Fourteenth Supplemental Indenture and satisfy all requirements necessary to make this Fourteenth Supplemental Indenture a valid instrument in accordance with its terms, and to make the Notes, when executed by the Company and authenticated and delivered by the Trustee, the valid obligations of the Company, and all acts and things necessary have been done and performed to

make this Fourteenth Supplemental Indenture enforceable in accordance with its terms, and the execution and delivery of this Fourteenth Supplemental Indenture has been duly authorized in all respects.

NOW, THEREFORE, THIS FOURTEENTH SUPPLEMENTAL INDENTURE WITNESSETH: For and in consideration of the premises and the purchase of the Notes by the holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all holders of the Notes, as follows:

ARTICLE I

DEFINITIONS

Section 1.1 *Definitions*.

For all purposes of this Fourteenth Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(a) Terms defined in the Base Indenture have the same meaning when used in this Fourteenth Supplemental Indenture unless otherwise specified herein.

(b) The terms defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular.

(c) The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Fourteenth Supplemental Indenture as a whole and not to any particular Article, Section or other subdivision, and any reference to an Article, Section or other subdivision refers to an Article, Section or other subdivision of this Fourteenth Supplemental Indenture.

(d) A term defined anywhere in this Fourteenth Supplemental Indenture has the same meaning throughout.

(e) The following terms have the meanings given to them in this Section 1.1:

"*APM Commencement Date*" means, with respect to any Extension Period, the second anniversary of the commencement of such Extension Period.

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

"*Business Day*" means any day other than a Saturday, Sunday or any other day on which banking institutions and trust companies in New York, New York, or Charlotte, North Carolina are permitted or required by any applicable law to close.

"*Capital Treatment Event*" means the reasonable determination by the Company that, as a result of any (i) amendment to, or change in, the laws or regulations of the United States or any political subdivision of or in the United States that is enacted or becomes effective after the initial issuance of the HITS, (ii) proposed change in those laws or regulations that is announced after the initial issuance of the HITS, or (iii) official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying such laws or regulations that is announced after the initial issuance of the HITS, there is more than an insubstantial risk of impairment of the Company's ability to treat the HITS (or any substantial portion) as Tier 1 capital (or the equivalent thereof) for purposes of the capital adequacy guidelines of the Federal Reserve, as then in effect and applicable to the Company.

"*Collateral Agent*" means The Bank of New York Trust Company, N.A., as Collateral Agent under the Collateral Agreement until a successor Collateral Agent shall have become such pursuant to the applicable provisions of the Collateral Agreement, and thereafter. "Collateral Agent" shall mean the Person who is then the Collateral Agent thereunder.

"*Collateral Agreement*" means the Collateral Agreement dated as of February 16, 2007 among the Company, The Bank of New York Trust Company, N.A., as Collateral Agent, Custodial Agent, Securities Intermediary and Securities Registrar, and the Trust, acting through The Bank of New York, as Property Trustee.

"*Commercially Reasonable Efforts*" by the Company to sell shares of its common stock or non-cumulative perpetual preferred stock means commercially reasonable efforts to complete the offer and sale of shares of its common stock or non-cumulative perpetual preferred stock, as the case may be, to third parties that are not affiliates of the Company in public offerings or private placements; provided that the Company shall be deemed to have used such Commercially Reasonable Efforts if a Market Disruption Event occurs and for so long as it continues regardless of whether the Company makes any offers or sales during such period; and provided, further that the Company shall not be deemed to have used such Commercially Reasonable Efforts if the Company determines to not pursue or complete such sale due to pricing, coupon, dividend rate or dilution considerations.

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

"*Corporate HITS*" has the meaning specified in the Declaration.

"*Coupon Rate*" has the meaning specified in Section 2.5.

"*Custodial Agent*" means The Bank of New York Trust Company, N.A., as Custodial Agent under the Collateral Agreement until a successor Custodial Agent shall have become such pursuant to the applicable provisions of the Collateral Agreement, and thereafter "Custodial Agent" shall mean the Person who is then the Custodial Agent thereunder.

"*Custody Note*" has the meaning specified in Section 2.4(d).

"*Declaration*" means the Amended and Restated Declaration of Trust, dated as of February 16, 2007, among the Company, as Sponsor, the Property Trustee, the Delaware Trustee, and the Regular Trustees (each as named therein), with respect to the HITS.

"*Early Dissolution Event*" means the dissolution of the Trust and the distribution of the Notes held by or on behalf of the Trust to the holders of the Trust Securities in accordance with Section 9.4 of the Declaration.

"*Early Remarketing*" means a Remarketing conducted pursuant to the provisions of Section 3.4.

An "*Early Settlement Event*" shall be deemed to have occurred if: (i) the Company's "total risk-based capital ratio" is less than 10%, (ii) the Company's "Tier 1 risk-based capital ratio" is less than 6%, (iii) the Company's "leverage capital ratio" is less than 4%; (iv) the Federal Reserve, in its discretion, anticipates that the Company may fail one or more of the capital tests referred to above in the near term and delivers a notice to the Company so stating; or (v) the Trust is dissolved pursuant to Section 9.2(f) of the Declaration, where the related Early Settlement Event in the case of the tests described in each of (i), (ii) and (iii) above will be deemed to occur on the date the Company files with the Federal Reserve a Form FR Y-9C showing in Schedule HC-R (or successor form) that the related capital measure has been failed. Each such ratio described above will be determined as required pursuant to Appendix A to Regulation Y of the Federal Reserve, 12 C.F.R. Part 225.

"*Eligible Proceeds*" means, with respect to any Interest Payment Date, the net proceeds (after underwriters' or placement agents' fees, commissions or discounts and other expenses relating to the issuance or sale) the Company has received during the 180-day period prior to such Interest Payment Date from the issuance or sale of the Company's common stock or non-cumulative perpetual preferred stock.

"*Extension Period*" has the meaning specified in Section 2.7(a).

"*Failed Remarketing*" means a Final Remarketing that is not Successful.

"*Federal Reserve*" means (i) the Board of Governors of the Federal Reserve System, as from time to time constituted, or if at any time after the execution of this Fourteenth Supplemental Indenture the Federal Reserve is not existing and performing the duties now assigned to it, then the body or bodies performing such duties at such time, or the Federal Reserve Bank of Richmond, or (ii) any successor Federal Reserve Bank (or successor body performing such duties) having primary jurisdiction over the Company.

"*Final Remarketing*" means (i) a Remarketing for a settlement date on February 15, 2013 (or if such day is not a Business Day, the immediately succeeding Business Day), (ii) in the case of an Early Remarketing, the fifth scheduled Remarketing or (iii) in the case of an Early Remarketing in connection with clause (v) of the definition of Early Settlement Event, the first Remarketing.

"*Fixed Rate Reset Cap*", as of any Remarketing Settlement Date, means the prevailing market yield, as determined by the Remarketing Agent, of the benchmark U.S. Treasury security

having a remaining maturity that most closely corresponds to the period from such date until the earliest date on which the Notes may be redeemed at the option of the Company in the event of a Successful Remarketing, plus 350 basis points, or 3.50%, *per annum.*

"*Floating Rate Reset Cap,*" which the Reset Spread may not exceed, means 300 basis points, or 3.00%,*per annum.*

"*Fourteenth Supplemental Indenture*" means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more agreements supplemental hereto entered into pursuant to the applicable provisions hereof.

"*Global Notes*" has the meaning specified in Section 2.4(b).

"*HITS*" means each of the Preferred HITS, the Treasury HITS and the Corporate HITS.

"*Interest Payment Date*" shall have the meaning specified in Section 2.5(a) or as may be specified by the Company following a Remarketing in accordance with Article III.

"*Interest Period*" means the period from and including the most recent Interest Payment Date to which interest has been paid or duly made available for payment (or February 16, 2007 if no interest has been paid or been duly made available for payment) to, but excluding, the next succeeding Interest Payment Date or, if earlier, the Maturity Date of the Notes.

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

"*Make-Whole Price*" means the sum of the present values of the remaining scheduled payments of principal discounted from the Maturity Date and interest thereon that would have been payable to and including the Maturity Date (not including any portion of such payments of interest accrued as of the Repayment Date) discounted from the Maturity Date to the Repayment Date at a discount rate equal to the Treasury Rate plus a spread of 0.50%.

"*Market Disruption Event*" means the occurrence or existence of any of the following events or sets of circumstances:

(i) the Company would be required to obtain the consent or approval of its stockholders or a regulatory body (including, without limitation, any securities exchange) or governmental body to issue or sell common stock, rights to purchase common stock or non-cumulative perpetual preferred stock and such consent or approval has not yet been obtained notwithstanding the Company's commercially reasonable efforts to obtain that consent or approval (including, without limitation, failing to obtain the approval for such issuance if required by the Federal Reserve after giving notice to the Federal Reserve as required hereunder);

(ii) trading in securities generally on the New York Stock Exchange or on any other national securities exchange or over-the-counter market on which the Company's common stock and/or preferred stock is then listed or traded shall have been suspended or the settlement of such trading generally shall have been materially disrupted or minimum prices shall have been established on any such exchange or such market by the Securities and Exchange Commission, by such exchange or by any other regulatory body or governmental body having jurisdiction;

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

(iv) an event occurs and is continuing as a result of which the offering document for such offer and sale of common stock, rights to purchase common stock or non-cumulative perpetual preferred stock would, in the judgment of the Company, 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 and either (a) the disclosure of that event at such time, in the judgment of the Company, is not otherwise required by law and would have a material adverse effect on the business of the Company or (b) the disclosure relates to a previously undisclosed proposed or pending material business transaction, the disclosure of which would impede the ability of the Company to consummate such transaction, provided that no single suspension period contemplated by this paragraph (iv) shall exceed 90 consecutive days and multiple suspension periods contemplated by this paragraph (iv) shall not exceed an aggregate of 180 days in any 360-day period; or

(v) the Company reasonably believes, for reasons other than those referred to in paragraph (iv) above, that the offering document for such offer and sale of common stock, rights to purchase common stock or non-cumulative perpetual preferred stock would not be in compliance with a rule or regulation of the Securities and Exchange Commission and the Company is unable to comply with such rule or regulation or such compliance is unduly burdensome, provided that no single suspension period contemplated by this paragraph (v) shall exceed 90 consecutive days and multiple suspension periods contemplated by this paragraph (v) shall not exceed an aggregate of 180 days in any 360-day period.

"*Maturity Date*" means March 15, 2043 or such earlier date as may be specified by the Company following a Remarketing in accordance with Article III.

"*Notes*" has the meaning specified in Section 2.1.

"*Paying Agent,*" when used with respect to the Notes, means The Bank of New York Trust Company, N.A., as paying agent hereunder or any other Person authorized by the Company to pay the principal of (and premium, if any) or interest on the Notes on behalf of the Company.

"*Paying Agent Office*" means the office of the applicable Paying Agent in New York, New York, which office at the date hereof in the case of The Bank of New York Trust Company, N.A., in its capacity as Paying Agent with respect to the Notes under the Base Indenture and this Fourteenth Supplemental Indenture, is located at 101 Barclay Street, Floor 8 West, New York, New York 10286, Attention: Corporate Trust Administration.

"*Person*" means a legal person, including any individual, corporation, association, partnership (general or limited), joint venture, trust, estate, limited liability company, or other legal entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"*Pledged Notes*" has the meaning specified in the Collateral Agreement.

"*Preferred Stock*" means the Adjustable Rate Non-Cumulative Preferred Stock, Series G, $100,000 liquidation preference per share, of the Company.

"*Property Trustee*" has the meaning set forth in the Declaration.

"*qualified floating rate*" has the meaning specified in Section 3.3(a)(iii).

"*Qualifying Treasury Securities*" has the meaning specified in the Declaration.

"*Regular Trustee*" means, in respect of the Trust, each individual identified as a "Regular Trustee" in the Declaration, solely in such individual's capacity as Regular Trustee of the Trust under the Declaration and not in such individual's individual capacity, or any successor Regular Trustee appointed as therein provided.

"*Remarketed Notes*" has the meaning specified in Section 2.4(c).

"*Remarketing*" means a remarketing of Notes pursuant to Article III and the Remarketing Agreement.

"*Remarketing Agent*" has the meaning set forth in the introduction to this Fourteenth Supplemental Indenture.

"*Remarketing Agreement*" has the meaning set forth in the introduction to this Fourteenth Supplemental Indenture.

"*Remarketing Date*" means the seventh Business Day preceding each of February 15, 2012, May 15, 2012, August 15, 2012, November 15, 2012 and February 15, 2013 until the settlement of a Successful Remarketing, or if an Early Settlement Event shall have occurred, each of the dates determined in accordance with Section 3.4.

"*Remarketing Period*" means the five consecutive Business Days beginning on the seventh Business Day preceding each of February 15, 2012, May 15, 2012, August 15, 2012, November 15, 2012 and February 15, 2013.

"*Remarketing Settlement Date*" means the February 15, May 15, August 15 or November 15 following the Remarketing Period in which a Successful Remarketing occurs, or if that day is not a Business Day, the immediately preceding Business Day.

"*Remarketing Value*" for each Note equals the present value on the Remarketing Settlement Date of an amount equal to the principal amount of, plus the interest payable on, such Note on the next Interest Payment Date, including any deferred interest, assuming for this purpose, even if not true, that the interest rate on the Notes remains at the rate in effect immediately prior to the Remarketing and all accrued and unpaid interest on the Notes is paid in cash on such date, determined using a discount rate equal to the interest rate on the Bank of America, N.A. Deposit (as defined in the Collateral Agreement).

"*Repayment Date*" has the meaning set forth in Section 2.6(a) hereof.

"*Reset Spread*" means, if the Notes are remarketed as floating rate notes, the spread, if any, set in a Remarketing, as specified in Section 3.3(a).

"*Reset Rate*" means, if the Notes are remarketed as fixed rate notes, the rate of interest on the Notes, if any, set in a Remarketing, as specified in Section 3.3(a).

"*Responsible Officer*" means, when used with respect to The Bank of New York Trust Company, N.A., any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs 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 such person's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of the Indenture.

"*Securities Registrar*" has the meaning specified in Section 2.12.

"*Securities Registrar Office*" means the office of the Securities Registrar at which at any particular time the Company has designated a register known as the "*Securities Register*" in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of the Notes and of transfers of Notes. At the date hereof, in the case of The Bank of New York Trust Company, N.A., such office is located at The Bank of New York, Towermarc Plaza, 2nd Floor, 10161 Centurion Parkway, Jacksonville, Florida 32256, Attention: Corporate Trust Administration.

"*Securities Register*" has the meaning specified in the definition of Securities Registrar Office.

"*Securities Act*" means the Securities Act of 1933 (or any successor statute), as it may be amended from time to time.

"*Senior Obligations*" has the meaning specified in Section 7.1.

"*Stock Purchase Contract Agreement*" means the Stock Purchase Contract Agreement, dated as of February 16, 2007, between the Company and the Trust acting through the Property Trustee.

"*Successful*" has the meaning specified in Section 3.5(a).

"*Tax Event*" has the meaning set forth in the Declaration.

"*Treasury Dealer*" means The Bank of New York (or its successor) or, if The Bank of New York (or its successor) refuses to act as treasury dealer for this purpose or ceases to be a primary U.S. Government securities dealer, another nationally recognized investment banking firm that is a primary U.S. Government securities dealer specified by us for these purposes.

"*Treasury HITS*" has the meaning specified in the Declaration.

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

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

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

"*Unsuccessful*" has the meaning specified in Section 3.5(b).

"*Underwriting Agreement*" means the Underwriting Agreement, dated as of February 12, 2007, among the Trust, the Company, and the underwriters named therein.

ARTICLE II

GENERAL TERMS AND CONDITIONS OF THE NOTES

Section 2.1 *Designation, Principal Amount and Authorized Denominations.*

There is hereby authorized and established under the terms of the Indenture a series of Securities designated the "Remarketable Fixed Rate Junior Subordinated Notes due 2043" (the "Notes"), limited in aggregate principal amount to no more than $1,300,100,000, which amount to be issued shall be as set forth in one or more written orders of the Company for the authentication and delivery of Notes pursuant to Section 2.04 of the Indenture. The denominations in which Notes shall be issuable is $1,000 principal amount and integral multiples thereof.

Section 2.2 *Maturity.*

The Maturity Date of the Notes will be March 15, 2043, subject to change as provided in Article III.

Section 2.3 *Form and Payment.*

Except as provided in Section 2.4, the Notes shall be issued in fully registered definitive form without interest coupons. Principal of and interest on the Notes issued in definitive form will be payable, the transfer of such Notes will be registrable and such Notes will be exchangeable for Notes bearing identical terms and provisions and notices and demands to or upon the Company in respect of the Notes and the Base Indenture, as supplemented by this Fourteenth Supplemental Indenture, may be served at the office or agency of the Trustee, and the Company appoints the Trustee as its agent for the foregoing purposes; provided that payment of interest may be made at the option of the Company by check mailed to the holder at such address as shall appear in the Securities Register or by wire transfer in immediately available funds to the bank account number of such holder specified in writing by the holder not less than ten days before the relevant Interest Payment Date. Notwithstanding the foregoing, so long as the holder of any Note is the Property Trustee on behalf of the Trust, the payment of the principal of and interest (including expenses and taxes of the Trust set forth in Section 4.1, if any) on such Notes held by the Property Trustee will be made at the Paying Agent Office or at such place and to such account as may be designated in writing by the Property Trustee. The Notes may be presented for registration of transfer or exchange at the Securities Registrar Office.

Section 2.4 *Notes Held by Collateral Agent and Custodial Agent; Global Notes; Adjustment of Notes*

(a) The Notes shall be issued initially in fully registered definitive form in the name of the Property Trustee, on behalf of the Trust, and shall be delivered to the Collateral Agent to be held as Pledged Notes pursuant to the terms of the Collateral Agreement. For so long as such Pledged Notes are held by the Collateral Agent or any Custody Notes are held by the Custodial Agent, in their respective capacities as such under the Collateral Agreement, each such Note shall represent the principal amount so indicated in the Securities Register, *provided* that the aggregate principal amount of all such Notes shall at all times equal the principal amount issued in accordance with Section 2.1.

(b) At any time on or after the first to occur of the Remarketing Settlement Date, an Early Dissolution Event or the redemption of the Corporate HITS by the Trust in exchange for Notes, the Notes in definitive form may be presented to the Securities Registrar for exchange for one or more global Notes in an aggregate principal amount equal to the aggregate principal amount of the Notes so presented (a "Global Note"), to be registered in the name of the Depositary, or its nominee, and delivered to the Depositary, or its custodian, for crediting to the accounts of its participants pursuant to the instructions of the Regular Trustees. The Company upon any such presentation shall execute one or more Global Notes in such aggregate principal

amount and deliver the same to the Trustee for authentication and delivery in accordance with the Indenture and this Fourteenth Supplemental Indenture. The Trustee, upon receipt of such Global Notes, together with an Officers' Certificate requesting authentication, will authenticate such Global Notes and deliver them to the Securities Registrar, as custodian for the Depositary. Payments on the Notes issued as Global Notes will be made to the Depositary.

(c) In the event that (i) any Pledged Notes for which no election has been validly made pursuant to Section 8.02(a) of the Collateral Agreement are to be released from the Pledge and delivered to the Remarketing Agent pursuant to Section 8.02(b) of the Collateral Agreement or (ii) any Custody Notes for which an election has been validly made pursuant to Section 8.03(a) of the Collateral Agreement are to be delivered to the Remarketing Agent pursuant to Section 8.03(b) of the Collateral Agreement (collectively, the "*Remarketed Notes*"), such transfers shall be evidenced by an endorsement by the Securities Registrar on the Notes held by the Collateral Agent and the Custodial Agent, respectively, and in the Securities Register reflecting a reduction in the principal amount of such Notes equal in amount to the principal amount of the Remarketed Notes. The Securities Registrar shall confirm any such reduced principal amount by faxing or otherwise delivering a photocopy of such endorsement made on the Notes evidencing such reduced principal amount to the Trustee at the facsimile number or address of the Trustee provided for notices to the Trustee in the Collateral Agreement (or at such other facsimile number or address as the Trustee shall provide to the Securities Registrar). Upon receipt of such confirmation, the Trustee shall instruct the Securities Registrar to increase the principal amount of a Global Note in an amount equal to the aggregate principal amount of the Remarketed Notes by an endorsement made by the Securities Registrar on such Global Note to reflect such increase.

(d) In the event that any Pledged Note is to be released from the Pledge (as defined in the Collateral Agreement) and transferred to the Custody Account (as defined in the Collateral Agreement) pursuant to Section 6.02(a) of the Collateral Agreement (a "*Custody Note*"), as a result of the exchange of Preferred HITS and Qualifying Treasury Securities for Treasury HITS and Corporate HITS as provided in said Section 6.02(a) of the Collateral Agreement, such transfer shall be evidenced by an endorsement by the Securities Registrar on the Pledged Notes held by the Collateral Agent reflecting a reduction in the principal amount of such Pledged Notes and on the Custody Notes held by the Custodial Agent reflecting an increase in the principal amount of such Custody Notes, in each case equal in amount to the principal amount of the Note so transferred. The Collateral Agent and the Custodial Agent shall confirm any such reduced principal amount of Pledged Notes and increased principal amount of Custody Notes by faxing or otherwise delivering a photocopy of such endorsements made on the Notes evidencing such reduced or increased principal amounts, as applicable, to the Trustee at the facsimile number or address of the Trustee provided for notices to the Trustee in the Collateral Agreement (or at such other facsimile number or address as the Trustee shall provide to the Collateral Agent and the Custodial Agent). Upon receipt of such confirmation, the Trustee shall instruct the Custodial Agent or Securities Registrar to account for such transfer in the manner as specified in the Collateral Agreement.

(e) In the event that a Note is transferred from the Custody Account to the Collateral Account pursuant to Section 6.03(b)(i) of the Collateral Agreement in connection with the exchange of Treasury HITS and Corporate HITS for Preferred HITS and Qualifying Treasury

Securities as provided in Section 6.03 of the Collateral Agreement, such transfer shall be evidenced by an endorsement by the Securities Registrar on the Pledged Notes held by the Collateral Agent reflecting an increase in the principal amount of such Pledged Notes and on the Custody Notes held by the Custodial Agent reflecting a reduction in the principal amount of such Custody Notes, in each case equal in amount to the principal amount of the Note so transferred. The Collateral Agent and the Custodial Agent shall confirm any such increased principal amount of Pledged Notes and reduced principal amount of Custody Notes by faxing or otherwise delivering a photocopy of such endorsements made on the Notes evidencing such increased or reduced principal amount, as applicable, to the Trustee at the facsimile number or address of the Trustee provided for notices to the Trustee in the Collateral Agreement (or at such other facsimile number or address as the Trustee shall provide to the Collateral Agent and the Custodial Agent). Upon receipt of such confirmation, the Trustee shall instruct the Custodial Agent or Securities Registrar to account for such transfer in the manner as specified in the Collateral Agreement.

Section 2.5 *Interest*.

(a) Prior to a Remarketing of the Notes, each Note will bear interest at the rate of 5.48% per annum (the "*Coupon Rate*"), from February 16, 2007 until the principal thereof becomes due and payable, and on any overdue principal and (to the extent that payment of such interest is enforceable under applicable law) on any overdue installment of interest or deferred interest at the Coupon Rate, compounded semi-annually, payable (subject to the provisions of Section 2.7) semi-annually in arrears on March 15 and September 15 of each year (each, an "*Interest Payment Date*") and on the Stock Purchase Date if not an Interest Payment Date, beginning on September 15, 2007, to the Person in whose name such Note or any predecessor Note is registered at the close of business on the regular record date for such interest installment, which, in respect of any Notes of which the Property Trustee is the holder, shall be the close of business on the Business Day next preceding that Interest Payment Date. Notwithstanding the foregoing sentence, if the Notes are no longer held by the Property Trustee or represented by a Global Note, the relevant record dates shall be the close of business on the last day of the month immediately preceding the month in which the Interest Payment Date falls. If there is a Failed Remarketing, interest shall also be payable on each Note on the Stock Purchase Date if the Stock Purchase Date is not otherwise an interest payment date.

(b) The amount of interest payable for any period will be computed on the basis of a 360-day year consisting of twelve 30-day months. In the event that any date on which interest is payable on the Notes is not a Business Day, then payment of interest payable on such date will be made on the next succeeding day which is a Business Day (and without any interest or other payment in respect of any such delay).

(c) As further described in Section 2.7, the Company shall have the right to defer the payment of interest on the Notes, as provided in Section 2.13 of the Base Indenture, for one or more Extension Periods. The Paying Agent shall give notice of the Company's election to begin or extend any Extension Period to the holders of the outstanding Notes in the form of a notice thereof as shall have been prepared by the Company and furnished to the Paying Agent.

Section 2.6 *Redemption of the Notes*.

(a) The Company may from time to time redeem the Notes (A) in whole but not in part, at any time within 90 days after a Tax Event, Capital Treatment Event or an Investment Company Event or (B) in whole or in part, at any date on or after March 15, 2017 (each such date, a "*Repayment Date*"). In the case of a Tax Event, the Company will have the right to redeem the Notes in whole but not in part at a redemption price equal to the greater of (i) 100% of the principal amount thereof or (ii) a Make-Whole Price, in each case, plus accrued and unpaid interest, including any deferred interest, to the Repayment Date, in accordance with Article 14 of the Base Indenture. In the case of a Capital Treatment Event or an Investment Company Event, the Company may redeem the Notes in whole, but not in part, at a redemption price equal to 100% of the principal amount thereof, plus accrued and unpaid interest, including any deferred interest, to the Repayment Date, in accordance with Article 14 of the Base Indenture. In the case of a Repayment Date on or after March 15, 2017, the Company may redeem the Notes in whole or in part at a redemption price equal to 100% of the principal amount thereof, plus accrued and unpaid interest, including any deferred interest, to the date of redemption, in accordance with Article 14 of the Base Indenture. Any redemption will be made upon not less than 15 nor more than 60 days notice to the holders of the Notes. If the Notes are redeemed in part pursuant to this Section 2.6, the Notes will be redeemed pro rata or by lot or by any other method utilized by the Trustee; provided that if, at the time of redemption, the Notes are registered as a Global Note, the Depositary shall determine, in accordance with its procedures, the principal amount of such Notes held by each holder of a Note to be redeemed. The redemption price shall be paid by 12:00 noon, New York time, on the Repayment Date or at such earlier time as the Company determines provided that the Company shall deposit with the Trustee an amount sufficient to pay the redemption price by 10:00 a.m., New York time, on the Repayment Date. The Company may not redeem the Notes in part if the principal amount has been accelerated and such acceleration has not been rescinded or unless all accrued and unpaid interest has been paid in full on all outstanding Notes for all interest periods terminating on or before the Repayment Date. In connection with a Remarketing, the Company may change the date after which it may redeem Notes to a later date or change the redemption price in accordance with Article III.

(b) The Notes are not entitled to any sinking fund payments.

(c) Payments on the Notes on any Repayment Date will be applied, first, to deferred interest to the extent of Eligible Proceeds raised pursuant to Section 2.9, second, to current interest to the extent not paid from other sources, and third, to the principal of the Notes; *provided* that if the Company is obligated to sell its common stock, mandatorily convertible preferred stock, debt exchangeable for equity, qualifying non-cumulative perpetual preferred stock, REIT preferred securities or qualifying capital securities and apply the net proceeds to payments of principal of or interest on any outstanding securities in addition to the Notes, then on any date and for any period the amount of net proceeds received by the Company from those sales and available for such payments shall be applied first to such other securities having an earlier scheduled maturity date than the Notes and then to the Notes and those other securities having the same scheduled maturity date as the Notes *pro rata* in accordance with their respective outstanding principal amounts and none of such net proceeds shall be applied to any other pari passu securities having a later scheduled maturity date until the principal of and all accrued and unpaid interest on the Notes has been paid in full.

Section 2.7 *Option to Defer Interest.*

(a) So long as no Event of Default has occurred and is continuing, the Company shall have the right at any time and from time to time prior to the Maturity Date to defer payment of interest on the Note, for up to 14 consecutive semi-annual Interest Periods, i.e. seven years after the commencement of such Extension Period (or the equivalent thereof, if the Interest Periods are not then semi-annual), with respect to each deferral period (each an "*Extension Period*"), during which Extension Periods the Company shall have the right to make partial payments of interest on any Interest Payment Date, and at the end of which the Company shall pay all interest then accrued and unpaid (together with Compounded Interest thereon to the extent permitted by applicable law); *provided* that no Extension Period shall extend beyond the Maturity Date of the principal of the Note, and each Extension Period shall end on a date that is an Interest Payment Date. Prior to the termination of any such Extension Period, the Company may further extend the interest payment period, *provided* that no Extension Period shall exceed 14 consecutive semi-annual Interest Periods (or the equivalent thereof if this Note is not then bearing interest semi-annually) or extend beyond the Maturity Date of the principal of the Note.

(b) During any such Extension Period (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, (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 the security being converted or exchanged or (iv) payment by the Company under any guarantee agreement executed for the benefit of the holders of the HITS); (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 Notes; and (c) the Company shall not make any payment under any guarantee that ranks equally with or junior to the guarantee agreement executed for the benefit of the holders of the HITS.

(c) An Extension Period shall terminate upon the payment on any Interest Payment Date of all deferred interest and any Compounded Interest then due, and the Company may elect to begin a new Extension Period, subject to the above requirements.

(d) The Company may elect to pay interest on any Interest Payment Date during any Extension Period to the extent permitted by Section 2.8.

(e) Upon the termination of any such Extension Period and upon the payment of all accrued and unpaid interest then due, the Company may elect to begin a new Extension Period, subject to the above requirements. Subject to the last sentence of this paragraph, no interest shall be due and payable during an Extension Period except at the end thereof. If the Notes are registered in the name of the Property Trustee, the Company will give the Property Trustee, the Delaware Trustee, the Regular Trustees and the Trustee written notice of its election

to defer interest payments at least one Business Day before the earlier of (i) the next succeeding Interest Payment Date and (ii) the date the Trust is required to give notice to the New York Stock Exchange or any other exchange on which the HITS are listed or any other applicable self-regulatory organization, if any, of the record date or payment date for the related distribution (however, in no event shall notice be required more than 15 Business Days prior to an Interest Payment Date). The Trustee shall give notice of the Company's election to begin or extend any Extension Period to the Property Trustee as holder of the Notes, to the Regular Trustees and to the holders of the Corporate HITS, and if such election is made prior to the Stock Purchase Date or, if earlier, the Remarketing Settlement Date, to the holders of the Preferred HITS. If the Notes are not registered in the name of the Property Trustee, the Company will give the holders of the Notes and the Trustee written notice of its election to defer interest payments at least ten Business Days before the earlier of (i) the next succeeding Interest Payment Date and (ii) the date the Trust is required to give notice of the record date or payment date of such interest payment to the New York Stock Exchange or any other exchange on which the Notes or the HITS are listed or any other applicable self-regulatory organization, or to the holders of the Notes (however, in no event shall notice be required more than 15 Business Days prior to an Interest Payment Date).

(f) If an Extension Period is in effect on the Stock Purchase Date and there is a Failed Remarketing, then the Company will pay the holder of the Note the deferred interest on the Stock Purchase Date in subordinated notes that (i) have a principal amount equal to the aggregate amount of deferred interest as of the Stock Purchase Date, (ii) mature on the later of March 15, 2015 and five years after commencement of the related deferral period, (iii) bear interest at the rate of 5.48% *per annum*, (iv) are subordinate and rank junior in right of payment and upon liquidation to all of the Company's Senior Obligations on the same basis as the Notes and (v) are redeemable by the Company at any time prior to their stated maturity, and the restrictions set forth in the first sentence of this paragraph shall remain in effect until the Company has paid in full all amounts outstanding under such notes; *provided*, that the Company shall register such subordinated notes under the Securities Act prior to the delivery thereof to the Property Trustee unless they may be so delivered pursuant to an exemption from registration thereunder, as set forth in an Opinion of Counsel delivered to the Trustee and the Property Trustee.

Section 2.8 *Payment of Deferred Interest.*

(a) The Company covenants and agrees with each holder of the Notes that if it defers payment of interest on any Interest Payment Date on or prior to the Stock Purchase Date, then (i) the Company shall notify the Federal Reserve if this covenant is applicable, (ii) the Company will pay deferred interest only out of Eligible Proceeds, and (iii) commencing with the date two years after the beginning of such Extension Period, the Company shall, subject to the approval of the Federal Reserve, continuously use its Commercially Reasonable Efforts to sell shares of common stock or non-cumulative perpetual preferred stock not later than the termination of such Extension Period in an amount so that the net proceeds of such sale, when applied to such deferred interest payments, will cause such unpaid deferred interest payments to be paid in full and (unless the Federal Reserve instructs otherwise) apply the proceeds of such sale to pay the deferred amounts (provided that the Company shall not in any event be required to pay interest on the Notes at a time when the payment of such interest would violate the terms

of any securities issued by the Company or any of its subsidiaries or the terms of a contract binding on the Company or any of its subsidiaries); provided, however, that the forgoing covenant shall not apply with respect to any interest on the Notes that is deferred and unpaid as of the date of consummation of any business combination where, immediately following its consummation, more than 50% of the surviving entity's voting stock is owned by the shareholders of the other party to the business combination; provided, further that the surviving entity may pay any deferred and unpaid interest with any available funds on the next Interest Payment Date following the date of consummation of the business combination or if later, at any time within 90 days following the date of consummation of the business combination. For the avoidance of doubt, the Company's failure to raise sufficient Eligible Proceeds, or its use of other sources to fund such deferred interest payments subject to the foregoing covenant, by itself, shall not constitute an Event of Default under the Indenture, and this Fourteenth Supplemental Indenture. Notwithstanding the foregoing, the Company will not be required to pay interest on the Notes at a time when the payment of interest would violate the terms of any securities issued by the Company or one of its subsidiaries or the terms of a contract binding on the Company or one of its subsidiaries.

(b) Notwithstanding Section 2.8(a), if the Company is required to conduct a sale of shares of common stock or non-cumulative perpetual preferred stock in order to pay amounts due and payable under any instruments or other securities that rank pari passu as to interest or distributions with the Notes, then the Company shall apply such proceeds to deferred interest payments on the Notes, on the one hand, and such other pari passu securities, on the other hand, on a ratable basis in proportion to the total amounts that are due on the Notes and such securities before the Company shall be relieved of its obligation to conduct the sale of the common stock or non-cumulative perpetual preferred stock and apply the proceeds thereof to such securities.

(c) If the Company issues subordinated notes in respect of deferred interest payments pursuant to Section 2.7(f), Sections 2.8(a) and (b) will apply to the payment of interest on and principal of these subordinated notes except that references to termination of the Extension Period shall instead be to the maturity date of these subordinated notes.

Section 2.9 *Alternative Payment Mechanism.*

The Company shall provide notice to the Federal Reserve at least ten Business Days prior to the APM Commencement Date. Immediately following any APM Commencement Date and until the termination of the related Extension Period, the Company, except to the extent that the Federal Reserve shall have disapproved, shall use Commercially Reasonable Efforts to issue common stock and non-cumulative perpetual preferred stock until the Company has raised an amount of Eligible Proceeds at least equal to the aggregate and unpaid amount of deferred interest on the Notes (including Compounded Interest thereon) and applied such Eligible Proceeds on the next Interest Payment Date to the payment of deferred interest (including Compounded Interest thereon) in accordance with Section 2.8; *provided* that:

(a) the foregoing obligations shall not apply in respect of any Interest Payment Date if the Company shall have provided to the Trustee (and to the Property Trustee of the Trust to the extent it is the holder of the Notes) no more than 15 and no less than ten Business

Days prior to such Interest Payment Date an Officers' Certificate stating that (i) a Market Disruption Event was existing after the immediately preceding Interest Payment Date and (ii) either (A) the Market Disruption Event continued for the entire period from the Business Day immediately following the preceding Interest Payment Date to the Business Day immediately preceding the date on which such Officers' Certificate is provided or (B) the Market Disruption Event continued for only part of such period but the Company was unable after Commercially Reasonable Efforts to raise sufficient Eligible Proceeds during the rest of that period to pay all accrued and unpaid interest due on the Interest Payment Date with respect to which such Officers' Certificate is being delivered; and

(b) to the extent that the Company has raised some but not all Eligible Proceeds necessary to pay all deferred interest (including Compounded Interest thereon) on any Interest Payment Date pursuant to this Section 2.9, such Eligible Proceeds shall be applied in accordance with Section 2.8.

Section 2.10 *Events of Default*.

(a) For purposes of the Notes (but not for purposes of any other Securities unless specifically set forth in the terms of such Securities), if one or more of the following shall occur and be continuing, such event shall constitute an "Event of Default" with respect to the Notes under the Base Indenture and this Fourteenth Supplemental Indenture:

(i) 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;

(ii) 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;

(iii) As long as the Notes are held by or on behalf of the Trust, the Trust shall have voluntarily or involuntarily dissolved, wound-up its business or otherwise terminated its existence except in connection with (i) the distribution of the Notes to holders of the Trust Securities in liquidation of their interests in the Trust; (ii) the redemption of all of the outstanding Trust Securities of the Trust; or (iii) certain mergers, consolidations or amalgamations, each as permitted by the Declaration; or

(iv) The Company shall fail to pay interest due in respect of the Notes for a period of 30 days after 14 consecutive semi-annual Interest Periods (or the equivalent thereof, if the Notes are not then bearing interest semi-annually).

(b) If an Event of Default with respect to the Notes at the time outstanding occurs and is continuing, then unless the principal of all of the Notes shall have already become due and payable, the Trustee or the holders of not less than 25% in aggregate principal amount of the outstanding Notes may declare the entire principal amount of and all accrued but unpaid interest on the Notes to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by holders), *provided* that, in the case of Notes issued to and held by the Trust, or any trustee thereof or agent therefor, if upon an Event of Default, the Trustee or the holders of not less than 25% in aggregate principal amount of the outstanding Notes fails to declare the entire principal and all accrued but unpaid interest of all the Notes to be immediately due and payable, the holders of at least 25% in aggregate liquidation amount of the Corporate HITS and, if such declaration occurs prior to the Stock Purchase Date or, if earlier, the Remarketing Settlement Date, the Preferred HITS then outstanding, acting together as a single class, shall have such right by a notice in writing to the Company and the Trustee. Upon any such declaration, such amount of the principal of and the accrued but unpaid interest on all the Notes shall become immediately due and payable, *provided* that the payment of principal and interest on the Notes shall remain subordinated to Senior Obligations to the extent provided in Article 15 of the Base Indenture except to the extent otherwise determined in connection with an Early Remarketing. Upon payment (i) of the amount of principal so declared due and payable and (ii) of interest on any overdue principal and overdue interest (in each case to the extent that the payment of such interest shall be legally enforceable), all of the Company's obligations in respect of the payment of the principal of and interest on the Notes shall terminate.

Section 2.11 *Notice of Defaults; Amount Payable upon Acceleration.*

So long as any Notes are held by or on behalf of the Trust, the Trustee shall provide to the holders of the Preferred HITS, Trust Common Securities and Corporate HITS such notices as it shall from time to time provide under Section 5.08 of the Base Indenture. In addition, the Trustee shall provide to the holders of the Preferred HITS, Trust Common Securities and Corporate HITS notice of any Event of Default or event that, with the giving of notice or lapse of time, or both, would become an Event of Default with respect to the Notes within 30 days after the actual knowledge of a Responsible Officer of the Trustee of such Event of Default or other event.

Section 2.12 *Securities Registrar; Paying Agent; Delegation of Trustee Duties.*

The Company appoints The Bank of New York Trust Company, N.A., as securities registrar (the "*Securities Registrar*") and Paying Agent with respect to the Notes for so long as it shall act as Collateral Agent and Custodial Agent under the Collateral Agreement and has custody of the Notes in either of such capacities.

ARTICLE III

REMARKETING AND RATE RESET PROCEDURES

Section 3.1 *Obligation to Conduct Remarketing and Related Requirements.*

(a) The Company shall appoint the Remarketing Agent and enter into a Remarketing Agreement prior to the first Remarketing to effect the Remarketing of the Notes upon the terms, conditions and other provisions provided therein and in the Declaration and the Collateral Agreement.

(b) The Remarketing Agreement shall provide that the Company and the Remarketing Agent agree to use commercially reasonable efforts to effect the Remarketing of the Notes as described in this Article III, and in connection therewith, the Remarketing Agent will use its commercially reasonable efforts to obtain a price for all the Remarketed Notes that results in proceeds, net of any remarketing fee, of at least 100% of their aggregate Remarketing Value. If in the judgment of counsel to the Company or the Remarketing Agent it is necessary for a registration statement covering the Notes to be filed and become effective under the Securities Act in order to effect the Remarketing, then the Company shall (i) use commercially reasonable efforts to ensure that a registration statement covering the full principal amount of Notes to be remarketed shall become effective in a form that will enable the Remarketing Agent to rely on it in connection with the Remarketing or (ii) effect such Remarketing pursuant to Rule 144A (if available) under the Securities Act or another available exemption from the registration requirements under the Securities Act.

Section 3.2 *Company Decisions in Connection with Remarketing.*

In connection with Remarketings, the Company shall have the right hereunder, subject to Section 3.3(a), without the consent of any holder of the Notes, to change certain terms of the Notes as provided below in this Section 3.2 in order to obtain the Remarketing Value. By not later than the 21st calendar day prior to each Remarketing Date, the Company will specify the following information or decisions in a notice to the Remarketing Agent, the Collateral Agent, the Custodial Agent, the Property Trustee (on behalf of the Trust) and the Trustee (clauses (a) through (e) applying only if the Remarketing is Successful and clause (f) applying only in the case of a Failed Remarketing):

(a) whether the Maturity Date will remain at March 15, 2043 or will be changed to an earlier date (specifying such date if applicable); *provided* that the Maturity Date may not be changed to a date earlier than the earlier of (i) March 15, 2017 and (ii) if the Remarketing Settlement Date occurs during an Extension Period, the seventh anniversary of the first day of such Extension Period;

(b) whether to change the date after which the Notes will be redeemable at the Company's option and the redemption price or prices; *provided* that no redemption date for the Notes, except in the case of a Tax Event, a Capital Treatment Event or an Investment Company Event, may be earlier than the earlier of (i) March 15, 2017 and (ii) if the Remarketing Settlement Date occurs during an Extension Period, the seventh anniversary of the first day of

such Extension Period; and provided, further, that if the Remarketing Settlement Date occurs during an Extension Period no redemption price may be less than the principal plus accrued and unpaid interest (including Compounded Interest) on the Notes;

(c) whether in connection with an Early Remarketing that is not the first scheduled Remarketing, the Company is exercising its right under Section 7.2 to cause the subordination provisions in the Base Indenture and this Fourteenth Supplemental Indenture to cease to apply to the Notes, if the Remarketing is Successful, from and after the Remarketing Settlement Date and if so, whether it also elects that the Notes shall no longer be subject to the interest deferral provisions of Section 2.7;

(d) whether the Notes will be remarketed as fixed rate notes or floating rate notes;

(e) if the Notes will be remarketed as floating rate notes, the applicable index (which must be a qualified floating rate) and the interest payment dates and manner of calculation of interest on the Notes, which the Company may change to correspond with the market conventions applicable to notes bearing interest at rates based on the applicable index; and

(f) whether following a Failed Remarketing:

(i) the Maturity Date will remain at March 15, 2043 or will be changed to an earlier date, which date shall not be earlier than March 15, 2017 (specifying such date if applicable); and

(ii) the date after which the Notes will be redeemable at the Company's option will be changed (which date shall not be earlier than March 15, 2017, except in the case of a Tax Event, a Capital Treatment Event or an Investment Company Event) and the redemption price or prices;

provided that if the Failed Remarketing occurs during an Extension Period any changed Maturity Date of the Notes determined pursuant to clause (i) or early redemption date determined pursuant to clause (ii) may not be earlier than the seventh anniversary of the first day of such Extension Period.

Any such elections made by the Company pursuant to clauses (a) through (e) shall, upon Successful completion of a Remarketing, automatically apply and come into effect in respect of all of the Notes (whether or not sold in the Remarketing) as of the Remarketing Settlement Date and any such elections made by the Company pursuant to clause (f) in connection with a Failed Remarketing shall come into effect in respect of the Notes upon the announcement by the Company that the Final Remarketing is a Failed Remarketing.

Section 3.3 *Reset of Interest Rate in Connection with Remarketings and Related Changes in Terms*

(a) As part of and in connection with each Remarketing, the Remarketing Agent shall determine the Reset Rate or Reset Spread on the Notes, subject to Sections 3.3(b)

through (e), pursuant to the Remarketing Agreement and in accordance with the other provisions of this Article III, that will apply to all Notes (whether or not sold in the Remarketing) if such Remarketing is Successful for each Interest Period or portion thereof commencing on or after such Remarketing Settlement Date, subject to the following provisions and limitations:

(i) in connection with a Remarketing that is not a Final Remarketing, (A) if the Notes are remarketed as fixed rate notes, the Reset Rate may not exceed the Fixed Rate Reset Cap and (B) if the Notes are remarketed as floating rate notes, the Reset Spread may not exceed the Floating Rate Reset Cap;

(ii) the interest rate on the Notes may not at any time be less than 0% per annum; and

(iii) if (A) the interest rate on the Notes is not a fixed rate or for a floating rate note the applicable index is not a "qualified floating rate" (as defined in U.S. Treasury regulations section 1.1275-5(b)), (B) interest on the Notes is not unconditionally payable at intervals of no more than one year through the remaining term of the Notes, or (C) the redemption price of the Notes is not their principal amount (disregarding a customary call premium that is fixed or objectively determinable based on a qualified floating rate), then the Company shall have received a written opinion of Morrison & Foerster LLP or other nationally recognized tax counsel experienced in such matters to the effect that the discussion contained in the Prospectus under the heading "Certain U.S. Federal Income Tax Consequences" is materially correct, taking into account all of the terms of the Notes following the Remarketing.

(b) If the Remarketing has been determined to be Successful in accordance with Section 3.5(a), by approximately 4:30 P.M., New York City time, on such Remarketing Date, the Remarketing Agent shall notify the Company, the Collateral Agent, the Custodial Agent, the Property Trustee (on behalf of the Trust) and the Trustee that the Remarketing was Successful and the Reset Rate or Reset Spread and any new Maturity Date or redemption provisions determined as part of such Remarketing in accordance with this Article III.

(c) If a Remarketing is Successful, then commencing with the related Remarketing Settlement Date the interest rate on the Notes shall be reset to the rate, determined in accordance with this Article III pursuant to such Remarketing and the other changes, if any, in the terms of the Notes as notified by the Company pursuant to Section 3.2, shall become effective in accordance with this Article III.

(d) If a Remarketing other than the Final Remarketing is not Successful:

(i) no Notes will be sold in such Remarketing;

(ii) the interest rate will remain unchanged unless and until it is reset pursuant to a subsequent Remarketing in accordance with this Article III;

(iii) the other changes, if any, in the terms of the Notes, as notified by the Company pursuant to Section 3.2, shall not become effective; and

(iv) the Company and the Remarketing Agent shall attempt another Remarketing beginning on the next Remarketing Date.

(e) Upon the occurrence of a Failed Remarketing:

(i) no Notes will be sold in such Remarketing and no further attempts at Remarketing shall be made;

(ii) the interest rate will remain unchanged and the Notes will continue to bear interest at the interest rate otherwise in effect, payable on the dates set forth in the Notes, subject to Section 2.5(b);

(iii) the other changes, if any, in the terms of the Notes as notified by the Company pursuant to clauses (a) through (e) of the second sentence of Section 3.2, shall not become effective;

(iv) the Maturity Date and early redemption date for the Notes will change in accordance with clause (f) of the second sentence of Section 3.2, as applicable;

(v) in the case of Notes corresponding to Preferred HITS and Trust Common Securities, such Notes will be applied in satisfaction of the Trust's obligations under Stock Purchase Contracts in accordance with the Collateral Agreement; and

(vi) in the case of Notes corresponding to Corporate HITS, such Notes will be returned to the Custodial Agent in accordance with the Collateral Agreement.

Section 3.4 *Early Remarketing.*

If an Early Settlement Event occurs prior to the Stock Purchase Date, the Remarketing Dates shall be the seventh Business Day prior to February 15, May 15, August 15 or November 15, commencing on the first such date that is at least 30 days after the occurrence of such Early Settlement Event, and concluding with the earlier to occur of the fifth such date and a Successful Remarketing; provided that in the case of an Early Settlement Event of the type described in clause (v) of the definition of such term, (1) there shall be only one Remarketing Date, (2) the Reset Rate or Reset Spread shall not be subject to the Fixed Rate Reset Cap or Floating Rate Reset Cap, as the case may be, and (3) if the Remarketing conducted on such date is not Successful, it shall be a Failed Remarketing and the Stock Purchase Date shall be the next succeeding March 15, June 15, September 15 or December 15 (or if such day is not a Business Day, the next Business Day).

Section 3.5 *Company Announcements.*

(a) If by 4:00 P.M., New York City time, on any day during a Remarketing Period the Remarketing Agent has found buyers for all of the Notes offered in the Remarketing in accordance with this Article III, a "*Successful*" Remarketing shall be deemed to have occurred. In the event of a Successful Remarketing, the Company shall issue a press release through Bloomberg Business News or other reasonable means of distribution stating that such Remarketing was Successful and specifying the Reset Rate or Reset Spread and any new Maturity Date or redemption provisions and shall post such information on its website on the World Wide Web.

(b) If, by 4:00 P.M., New York City time, the final day of a Remarketing Period the Remarketing Agent is unable to find buyers for all of the Notes offered in such Remarketing, including any Remarketing that would qualify as a Final Remarketing, in accordance with this Article III, an "*Unsuccessful*" Remarketing shall be deemed to have occurred. In the event of an Unsuccessful Remarketing, the Company shall issue a press release through Bloomberg Business News or other reasonable means of distribution stating that such Remarketing was an Unsuccessful Remarketing, and publish such information on its website.

Section 3.6 *Supplemental Indenture*.

Notwithstanding any provision of the Base Indenture to the contrary, the Company and the Trustee may enter into a supplemental indenture without the consent of any holder of the Notes to reflect any modifications to the terms of the Notes pursuant to the terms of this Article III and to provide for the exchange of the Notes for Notes in the form reflecting such modifications and adopted pursuant to such supplemental indenture.

ARTICLE IV

EXPENSES

Section 4.1 *Expenses*.

In connection with the offering, sale and issuance of the Notes to the Property Trustee on behalf of the Trust and in connection with the sale of the Trust Securities by the Trust, the Company, in its capacity as borrower with respect to the Notes, shall:

(a) pay all costs and expenses relating to the offering, sale and issuance of the Notes, including commissions to the underwriters payable pursuant to the Underwriting Agreement and compensation of the Trustee under the Indenture in accordance with the provisions of Section 6.06 of the Indenture; and

(b) be responsible for and shall pay all debts and obligations (except for any amounts owed to holders of the HITS in their respective capacities as holders) and all costs and expenses of the Trust (including, but not limited to, costs and expenses relating to the organization, maintenance and dissolution of the Trust, the offering, sale and issuance of the Trust Securities (including commissions to the underwriters in connection therewith), the fees and expenses (including reasonable counsel fees and expenses) of the Property Trustee, the Delaware Trustee, the Regular Trustees, the Securities Registrar, and the Paying Agent, the costs and expenses relating to the operation of the Trust, including, without limitation, costs and expenses of accountants, attorneys, statistical or bookkeeping services, expenses for printing and engraving and computing or accounting equipment, paying agent(s), registrar(s), transfer agent(s), duplicating, travel and telephone and other telecommunications expenses and costs and expenses incurred in connection with the acquisition, financing, and disposition of Trust assets and the enforcement by the Property Trustee of the rights of the holders of the Notes and the holders of the HITS).

ARTICLE V

FORM OF NOTE

Section 5.1 *Form of Notes*.

The Notes are to be substantially in the following form and shall bear any legend required by Sections 2.01 and 2.11 of the Base Indenture:

[IF THE NOTE IS TO BE A GLOBAL NOTE, INSERT - This Note is a Global Note within the meaning of the Indenture hereinafter referred to and is registered in the name of The Bank of New York, as Property Trustee of BAC Capital Trust XIV (the "Trust"). This Note is exchangeable for Notes registered in the name of a person other than The Bank of New York, as Property Trustee of BAC Capital Trust XIV, or its nominee only in the limited circumstances described in the Indenture, and no transfer of this Note may be registered except in limited circumstances.

Unless this Note is presented by an authorized representative of The Depository Trust Company, New York ("DTC") to the issuer or its agent for registration of transfer, exchange or payment, and any Note issued is registered in the name of CEDE & CO. or such other name as requested by an authorized representative of DTC (and any payment hereon is made to Cede & Co. or such other entity as is requested by an authorized representative of DTC), 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 NOTE 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.

$_____ CUSIP No. _____

ISIN No. _____

No. XIV-R-__

BANK OF AMERICA CORPORATION

REMARKETABLE FIXED RATE JUNIOR SUBORDINATED NOTE DUE 2043

BANK OF AMERICA CORPORATION, a corporation organized and existing under the laws of Delaware (hereinafter called the "*Company*", which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay to THE BANK OF NEW YORK, AS PROPERTY TRUSTEE OF BAC CAPITAL TRUST XIV, or registered assigns, the principal sum of _____ Dollars ($_____) on March 15, 2043 or such earlier date as may be specified by the Company following a Remarketing (such date is hereinafter referred to as the "*Maturity Date*").

The Company further promises to pay interest on said principal sum from February 16, 2007, or from the most recent interest payment date (each such date, an "*Interest Payment Date*") on which interest has been paid or duly provided for (subject to deferral as set forth herein), semi-annually in arrears on March 15 and September 15 of each year, commencing September 15, 2007, and on the Stock Purchase Date if not otherwise an Interest Payment Date, at a rate equal 5.48% *per annum* (or after the Remarketing Settlement Date at such rate per annum as may be established in the Remarketing), until the principal hereof is paid or duly provided for or made available for payment. The amount of interest payable for any period shall be calculated on the basis of a 360-day year consisting of twelve 30-day months. In the event that any date on which interest is payable on this Note is not a Business Day, then payment of the interest payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay), with the same force and effect as if made on the date the payment was originally payable. A "*Business Day*" shall mean any day other than a Saturday, Sunday, or any other day on which banking institutions and trust companies in New York, New York or Charlotte, North Carolina, are permitted or required by any applicable law to close. The interest installment so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture, be paid to the person in whose name this Note (or one or more Predecessor Securities, as defined in the Indenture) is registered at the close of business on the regular record date for such interest installment, which shall be the close of business on the business day next preceding such Interest Payment Date. IF PURSUANT TO THE PROVISIONS OF THE INDENTURE THE NOTES ARE NO LONGER HELD BY THE PROPERTY TRUSTEE OR NO LONGER REPRESENTED BY A GLOBAL NOTE, the record date shall be the close of business on the last day of the month immediately preceding the month in which the Interest Payment Date falls. Any such interest installment not punctually paid or duly provided for shall forthwith cease to be payable to the registered holders on such regular record date and may be paid to the Person in whose name this Note (or one or more Predecessor Securities) is registered at the close of business on a special record date to be fixed by the Trustee (as hereinafter defined) for the payment of such defaulted interest, notice whereof shall be given to the registered holders of this series of Notes not less than ten days prior to such special record date, or may be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Notes may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture.

The principal of (and premium, if any) and the interest on this Note shall be payable at the office or agency of the Trustee maintained for that purpose in any coin or currency of the United States of America that at the time of payment is legal tender for payment of public and private debts; provided, however, that payment of interest may be made at the option of the Company by check mailed to the registered holder at such address as shall appear in the Security Register. Notwithstanding the foregoing, so long as the holder of this Note is the Property Trustee, the payment of the principal of (and premium, if any) and interest on this Note will be made at such place and to such account as may be designated by the Property Trustee. Notwithstanding the foregoing, so long as the holder of this Note is the Property Trustee, the payment of the principal of and interest (including expenses and taxes of BAC Capital Trust XIV

set forth in Section 4.1 of the Fourteenth Supplemental Indenture, if any) on this Note will be made at the Paying Agent Office or at such place and to such account as may be designated in writing by the Property Trustee. This Note may be presented for registration of transfer or exchange at the Securities Registrar Office.

If the principal amount hereof or any portion of such principal amount is not paid when due (whether upon acceleration, upon the date set for payment of the redemption price as provided in the Indenture or upon the Maturity Date) or if interest due hereon (or any portion of such interest), is not paid when due, then in each such case the overdue amount shall, to the extent permitted by law, bear interest at the rate then borne by this Note for the applicable Interest Period, compounded at the end of such Interest Period ("Compounded Interest"), which interest shall accrue from the date such overdue amount was originally due to the date payment of such amount, including interest thereon, has been made or duly provided for. All such interest shall be payable as set forth in the Indenture.

The indebtedness evidenced by this Note is, to the extent provided in the Indenture, subordinate and junior in right of payment and upon liquidation to the prior payment in full of all Senior Obligations, and this Note is issued subject to the provisions of the Indenture with respect thereto; *provided* that, in connection with an Early Remarketing that is not the first scheduled Remarketing, the Company may elect that effective on or after the Remarketing Settlement Date the indebtedness evidenced by this Note shall cease to be subordinate and junior in right of payment and upon liquidation to the prior payment in full of all Senior Obligations. Each holder of this Note, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on its behalf to take such actions as may be necessary or appropriate to effectuate the subordination so provided and (c) appoints the Trustee its attorney-in-fact for any and all such purposes. Each holder hereof, by its acceptance hereof, waives all notice of the acceptance of the subordination provisions contained herein and in the Indenture by each holder of Senior Obligations, whether now outstanding or hereafter incurred, and waives reliance by each such holder upon said provisions.

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

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

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

BANK OF AMERICA CORPORATION

By: _____

CERTIFICATE OF AUTHENTICATION

This is one of the Notes of the series designated therein referred to in the within mentioned Indenture.

Dated:

THE BANK OF NEW YORK TRUST COMPANY, N.A.,
not in its individual capacity but solely as Trustee

By: _____
Authorized Signatory

(FORM OF REVERSE OF NOTE)

This Note is one of a duly authorized series of Notes of the Company (herein called the "*Notes*") specified in the Indenture and issued or to be issued in one or more series under the Restated Junior Subordinated Debt Securities Indenture dated as of November 1, 2001 (herein called the "*Base Indenture*"), between the Company and The Bank of New York Trust Company, N.A., as successor to The Bank of New York (herein called the "*Trustee*"), as amended and supplemented, and as further amended and supplemented by the Fourteenth Supplemental Indenture, dated as of February 16, 2007, between the Company and the Trustee (the "*Fourteenth Supplemental Indenture*," and together with the Base Indenture, the "*Indenture*"), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Trustee, the Company and the holders of the Notes, and of the terms upon which the Notes are, and are to be, authenticated and delivered. By the terms of the Indenture, the Securities are issuable in series that may vary as to amount, date of maturity, rate of interest, rank and in other respects as provided in the Indenture. This series of Notes is limited in aggregate principal amount as specified in the Fourteenth Supplemental Indenture.

Subject to the prior approval of the Federal Reserve, the Company may at any time, at its option, redeem this Note, without premium or penalty, (i) within 90 days after a Tax Event, in whole but not in part, at a redemption price equal to the greater of (a) 100% of the principal amount thereof or (b) a Make-Whole Price, in each case plus accrued and unpaid interest, including any deferred interest, to the Repayment Date, (ii) within 90 days after a Capital Treatment Event or an Investment Company Event, in whole but not in part, at a redemption price equal to 100% of the principal amount hereof plus accrued and unpaid interest, including any deferred interest, to the Repayment Date, or (iii) from time to time on or after March 15, 2017 (or such later date as may be specified by the Company in connection with a Remarketing), in whole or in part, at a redemption price equal to 100% of the principal amount hereof plus accrued and unpaid interest, including any deferred interest, to the Repayment Date, and in each case subject to the terms and conditions of Article 14 of the Base Indenture and Section 2.6 of the Fourteenth Supplemental Indenture.

In the event of redemption of this Note in part only, a new Note or Notes of this series for the portion hereof not prepaid will be issued in the name of the holder hereof upon the cancellation hereof.

Subject to the limitations described in Sections 2.7 and 2.8 of the Fourteenth Supplemental Indenture, and so long as no Event of Default has occurred and is continuing, the Company shall have the right at any time and from time to time prior to the Maturity Date to defer payment of interest on this Note, for up to 14 consecutive semi-annual Interest Periods, i.e. seven years after the commencement of such Extension Period (or the equivalent thereof, if the Interest Periods are not then semi-annual), with respect to each Extension Period, during which Extension Periods the Company shall have the right to make partial payments of interest on any Interest Payment Date, and at the end of which the Company shall pay all interest then accrued and unpaid (together with Compounded Interest thereon to the extent permitted by applicable law); *provided* that no Extension Period shall extend beyond the Maturity Date of the principal of this Note, and each Extension Period shall end on a date that is an Interest Payment Date.

Prior to the termination of any such Extension Period, the Company may further extend the interest payment period, *provided* that no Extension Period shall exceed 14 consecutive semi-annual Interest Periods (or the equivalent thereof if this Note is not then bearing interest semi-annually) or extend beyond the Maturity Date of the principal of this Note.

No sinking fund is provided for the Notes.

This Note shall be remarketed as provided in the Indenture. In connection therewith, the Company may change the Maturity Date, the date after which this Note may be redeemed in whole or in part prior to the Maturity Date at the option of the Company, the rate of interest payable on this Note, the Interest Payment Dates, the manner of calculating interest on this Note and certain other provisions of the Notes, all as set forth in the Indenture and without the consent of any holder of this Note.

The Indenture contains provisions for satisfaction and discharge of the entire indebtedness of this Note upon compliance by the Company with certain conditions set forth in the Indenture.

The Indenture contains provisions permitting the Company and the Trustee, with the consent of the holders of not less than a majority in aggregate principal amount of the securities of each series affected at the time outstanding, as defined in the Indenture, voting as a class, to execute supplemental indentures for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or of any supplemental indenture or of modifying in any manner the rights of the holders of the Notes; provided, however, that no such supplemental indenture shall (i) extend the fixed maturity of any Note (except as set forth in the terms of the Notes), 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 Notes, or impair or affect the right of any holder of Notes 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 Note so affected, or (ii) reduce the aforesaid percentage of Notes, the holders of which are required to consent to any such supplemental indenture, without the consent of the holders of each Note then outstanding and affected thereby. The Indenture also contains provisions permitting the holders of a majority in aggregate principal amount of the Notes at the time outstanding affected thereby, on behalf of all of the holders of the Notes, to waive any past default or Event of Default prior to a declaration of acceleration other than (i) a default in the payment of principal of, premium, if any, or interest on the Notes, (ii) a default in respect of covenants that cannot be modified or amended without the consent of each holder of the Notes, or (iii) a default in respect of the covenant contained in Section 2.7(b) of the Fourteenth Supplemental Indenture. Any such consent or waiver by the registered holder of this Note (unless revoked as provided in the Indenture) shall be conclusive and binding upon such holder and upon all future holders and owners of this Note and of any Note issued in exchange herefor or in place hereof (whether by registration of transfer or otherwise), irrespective of whether or not any notation of such consent or waiver is made upon this Note.

As provided in and subject to the provisions of the Indenture, if an Event of Default with respect to the Notes at the time outstanding occurs and is continuing, then in each and every such case the Trustee or the holders of not less than 25% in principal amount of the outstanding Notes may declare the entire principal amount of and all accrued but unpaid interest on the Notes to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by holders), *provided* that, in the case of Notes issued to and held by BAC Capital Trust XIV, or any trustee thereof or agent therefor, if upon an Event of Default, the Trustee or the holders of not less than 25% in principal amount of the outstanding Notes fails to declare the entire principal and all accrued but unpaid interest of all the Notes to be immediately due and payable, the holders of at least 25% in aggregate liquidation amount of the Corporate HITS and, if such declaration occurs prior to the Stock Purchase Date or, if earlier, the Remarketing Settlement Date, the holders of the Preferred HITS then outstanding, acting together as a single class, shall have such right by a notice in writing to the Company and the Trustee. Upon any such declaration, such amount of the principal of and the accrued but unpaid interest on all the Notes shall become immediately due and payable, *provided* that the payment of principal and interest on the Notes shall remain subordinated to Senior Obligations to the extent provided in Article 15 of the Base Indenture except to the extent otherwise determined in connection with an Early Remarketing. Upon payment (i) of the amount of principal so declared due and payable and (ii) of interest on any overdue principal and overdue interest (in each case to the extent that the payment of such interest shall be legally enforceable), all of the Company's obligations in respect of the payment of the principal of and interest on this Note shall terminate.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and premium, if any, and interest on this Note at the time and place and at the rate and in the money herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Note is registrable in the Securities Register, upon surrender of this Note for registration of transfer at the office or agency of the Company maintained under Section 3.02 of the Base Indenture duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Securities Registrar (as defined in the Fourteenth Supplemental Indenture) duly executed by, the holder hereof or his attorney duly authorized in writing, and thereupon one or more new Notes of such series, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees. No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment of this Note for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee designated under Section 3.02 of the Base Indenture shall treat the Person in whose name this Note is registered as the owner hereof for all purposes, whether or not this Note be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

No recourse shall be had for the payment of the principal of or the interest on this Note, or for any claim based hereon, or otherwise in respect hereof, or based on or in respect of the

Indenture, against any incorporator, stockholder, officer or director, past, present or future, as such, of the Company or of any predecessor or successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issuance hereof, expressly waived and released.

[IF THIS IS A GLOBAL NOTE: This Global Note is exchangeable for Notes in definitive form only under limited circumstances set forth in the Indenture.] Notes of this series are issuable only in registered form without coupons in minimum denominations of $1,000 and any integral multiples of $1,000 in excess thereof. As provided in the Indenture and subject to certain limitations herein and therein set forth, Notes of this series so issued are exchangeable for a like aggregate principal amount of Notes of this series of a different authorized denomination, as requested by the holder surrendering the same.

The Company and, by its acceptance of this Note or a beneficial interest therein, the holder of, and any Person that acquires a beneficial interest in, this Note agree that for United States Federal, state and local tax purposes it is intended that this Note constitute indebtedness.

THE INTERNAL LAWS OF THE STATE OF NEW YORK SHALL GOVERN THE INDENTURE AND THE NOTES WITHOUT REGARD TO CONFLICTS OF LAWS PROVISIONS THEREOF.

All terms used in this Note that are defined in the Indenture shall have the meanings assigned to them in the Indenture.

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

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Note to:

_____

_____

_____

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

_____

_____

_____

(Insert address and zip code of assignee)

agent to transfer this Note on the books of the Securities Registrar. The agent may substitute another to act for him or her.

Dated: Signature:
Signature Guarantee:

(Sign exactly as your name appears on the other side of this Note)

Signatures must be guaranteed by an "*eligible guarantor institution*" meeting the requirements of the Securities Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("*STAMP*") or such other "*signature guarantee program*" as may be determined by the Securities Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

ARTICLE VI

ORIGINAL ISSUE OF NOTES

Section 6.1 *Original Issue of Notes*.

Notes in the aggregate principal amount of up to $1,300,100,000 may, upon execution of this Fourteenth Supplemental Indenture, be executed by the Company and delivered to the Trustee or an Authenticating Agent for authentication, and the Trustee or an Authenticating Agent shall thereupon authenticate and deliver said Notes in accordance with a Company Order.

Section 6.2 *Calculation of Original Issue Discount.*

If during any calendar year any original issue discount shall have accrued on the Notes, the Company shall file with each Paying Agent (including the Trustee if it is a Paying Agent) promptly at the end of each calendar year (i) a written notice specifying the amount of original issue discount (including daily rates and accrual periods) accrued on outstanding Securities as of the end of such year and (ii) such other specific information relating to such original issue discount as may then be relevant under the Internal Revenue Code of 1986, as amended from time to time.

ARTICLE VII

SUBORDINATION

Section 7.1 *Senior Obligations.*

(a) The subordination provisions of Article 15 of the Indenture shall apply; provided that for purposes of the Notes (but not for purposes of any other Securities unless specifically set forth in the terms of such Securities), the definition of "Senior Obligations" in the Indenture is hereby deleted in its entirety and replaced by the following:

"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 (including junior subordinated debt securities and guarantees issued by the Company or its predecessor entities with respect to any existing or future trust preferred securities under the Indenture or otherwise); (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); provided that "Senior Obligations" shall not include any such indebtedness (including without limitation any junior subordinated debt securities and guarantees) that is by its terms subordinated to or *pari passu* with the Notes, including any such indebtedness that the Federal Reserve authorizes for inclusion in Tier 1 capital, all limited to the extent that the classification of such indebtedness as ranking subordinated to or equally with the Notes is authorized under the capital rules of the Federal Reserve."

(b) The Notes shall rank *pari passu* with: (i) the Company's Remarketable Floating Rate Notes due 2043, (ii) the Company's Guarantee in respect of the HITS, (iii) the Company's Guarantee in respect of the HITS issued by BAC Capital Trust XIII, (iv) the Company's Guarantee in respect of the Trust Common Securities issued by the Trust, (v) the Company's Guarantee in respect of the Trust Common Securities issued by BAC Capital Trust XIII, (vi) the Stock Purchase Contracts issued by the Company in respect of the HITS pursuant to the Stock Purchase Contract Agreement, and (vii) the stock purchase contracts issued by the Company in respect of the HITS issued by BAC Capital Trust XIII.

Section 7.2 *Company Election to End Subordination.*

The Company may elect, at any time effective on or after the Remarketing Settlement Date in connection with an Early Remarketing of the Notes that is not the first scheduled Remarketing, that its obligations under the Notes shall cease to be subordinated to Senior Obligations, in which case the provisions of Article 15 of the Base Indenture and, if the Company so elects, Section 2.7 hereof and Section 2.13 of the Base Indenture, shall thereafter no longer apply to the Notes, and the Notes shall cease to constitute pari passu securities with any other securities that by their terms have been deemed to rank equally with the Notes. The Company shall give the Trustee notice of any such election not later than the effective time, and shall promptly issue a press release through Bloomberg Business News or other reasonable means of distribution.

Section 7.3 *Compliance with Federal Reserve Rules.*

The Company shall not incur any additional indebtedness for borrowed money that ranks pari passu with or junior to the Notes (if then subject to Article 15 of the Base Indenture), except in compliance with applicable regulations and guidelines of the Federal Reserve.

Section 7.4 *Extension of Rights, Privileges, etc.*

Anything contained herein or in the Indenture to the contrary notwithstanding, the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

ARTICLE VIII

MISCELLANEOUS

Section 8.1 *Effectiveness*.

This Fourteenth Supplemental Indenture will become effective upon its execution and delivery.

Section 8.2 *Successors and Assigns*.

All covenants and agreements in the Base Indenture, as supplemented and amended by this Fourteenth Supplemental Indenture, by the Company shall bind its successors and assigns, whether so expressed or not.

Section 8.3 *Further Assurances.*

The Company will, at its own cost and expense, execute and deliver any documents or agreements, and take any other actions that the Trustee or its counsel may from time to time request in order to assure the Trustee of the benefits of the rights granted to the Trustee under the Indenture, as supplemented and amended by this Fourteenth Supplemental Indenture.

Section 8.4 *Effect of Recitals.*

The recitals contained herein and in the Notes, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and neither the Trustee nor any Authenticating Agent assumes any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Notes. Neither the Trustee nor any Authenticating Agent shall be accountable for the use or application by the Company of the Notes or the proceeds thereof.

Section 8.5 *Ratification of Indenture.*

The Base Indenture, as supplemented by this Fourteenth Supplemental Indenture, is in all respects ratified and confirmed, and this Fourteenth Supplemental Indenture shall be deemed part of the Indenture in the manner and to the extent herein and therein provided.

Section 8.6 *Governing Law*.

This Fourteenth Supplemental Indenture and the Notes shall be governed by and construed in accordance with the laws of the State of New York.

* * * *

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

IN WITNESS WHEREOF, the parties hereto have caused this Fourteenth Supplemental Indenture to be duly executed, and their respective corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

BANK OF AMERICA CORPORATION

By: /s/ Ann J. Travis
Name: Ann J. Travis
Title: Senior Vice President

THE BANK OF NEW YORK TRUST COMPANY, N.A.,
as Trustee

By: /s/ Tina D. Gonzalez
Name: Tina D. Gonzalez
Title: Assistant Treasurer

Exhibit 4.8

Stock Purchase Contract Agreement

between

BANK OF AMERICA CORPORATION

and

BAC CAPITAL TRUST XIII,
acting through The Bank of New York,
as Property Trustee

Dated as of February 16, 2007

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STOCK PURCHASE CONTRACT AGREEMENT, dated as of February 16, 2007, between **BANK OF AMERICA CORPORATION**, a Delaware corporation (the *"Company"*), having its principal office at 100 North Tryon Street, Charlotte, North Carolina 28255, and BAC Capital Trust XIII, a Delaware statutory trust (the *"Trust"*), acting through **THE BANK OF NEW YORK**, a New York banking corporation, not in its individual capacity but solely as Property Trustee of the Trust (the *"Property Trustee"*).

RECITALS OF THE COMPANY

The Company has duly authorized the execution and delivery of this Agreement.

All things necessary to make the Stock Purchase Contracts (as defined herein) the valid obligations of the Company, and to constitute these presents a valid agreement of the Company, in accordance with its terms, have been done.

NOW, THEREFORE, THIS STOCK PURCHASE CONTRACT AGREEMENT WITNESSETH: For and in consideration of the agreements and obligations set forth herein and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed as follows:

ARTICLE I

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.1 *Definitions.*

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular.

(b) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles, and the term "generally accepted accounting principles" with respect to any computation required or permitted hereunder shall mean such accounting principles that are generally accepted in the United States at the date or time of such computation; *provided* that when two or more principles are so generally accepted, it shall mean that set of principles consistent with those in use by the Company.

(c) The words "*herein*," "*hereof*" and "*hereunder*" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

(d) Unless the context otherwise requires, any references to an "Article," a "Section" or another subdivision refers to an Article, a Section or another subdivision, as the case may be, of this Stock Purchase Contract Agreement.

"Agreement" means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more agreements supplemental hereto entered into pursuant to the applicable provisions hereof.

"Bank of America Deposit" means an interest-bearing deposit of cash or cash equivalents with Bank of America, N.A. to be made on the Remarketing Settlement Date and payable on the Stock Purchase Date that will provide the Trust with sufficient cash on the Stock Purchase Date to purchase the Preferred Stock and to make the final payment due to holders of Preferred HITS (other than those that elected to exchange their securities) on such date. The deposit shall be established in the name of the Collateral Agent pursuant to an agreement naming the Collateral Agent as customer and providing that Bank of America, N.A.'s jurisdiction for purposes of Article 9 of the Uniform Commercial Code is New York.

"Bankruptcy Code" means the Bankruptcy Reform Act of 1978, Title 11 of the United States Code, as amended from time to time, or any other law of the United States that from time to time provides a uniform system of bankruptcy laws.

"Base Indenture" means the Restated Junior Subordinated Debt Securities Indenture, dated as of November 1, 2001, between the Company and The Bank of New York Trust Company, N.A., as successor trustee.

"Board of Directors" means the board of directors of the Company or any committee of that board of directors of the Company duly authorized to act hereunder.

"Business Day" means any day other than a Saturday, Sunday or any other day on which banking institutions and trust companies in New York, New York or Charlotte, North Carolina are permitted or required by law or executive order to close.

"Code" means the Internal Revenue Code of 1986, as amended.

"Collateral" has the meaning specified in the Collateral Agreement.

"Collateral Agent" means The Bank of New York Trust Company, N.A. as Collateral Agent, under the Collateral Agreement until a successor Collateral Agent shall have become such pursuant to the applicable provisions of the Collateral Agreement, and thereafter "Collateral Agent" shall mean the Person who is then the Collateral Agent thereunder.

"Collateral Agreement" means the Collateral Agreement, dated as of the date hereof, among the Company, the Trust (acting through the Property Trustee), the Collateral Agent, the Custodial Agent, the Securities Intermediary and the Securities Registrar, as amended from time to time.

"Company" means the Person named as the "Company" in the first paragraph of this Agreement until a successor shall have become such pursuant to the applicable provision of this Agreement, and thereafter "Company" shall mean such successor.

"Contract Payments" means the payments payable by the Company on the Payment Dates in respect of each outstanding Stock Purchase Contract, at the rate of 0.15% per annum of the Stated Amount of each outstanding Stock Purchase Contract.

"*Corporate HITS" has the meaning specified in the Declaration.*

"Custodial Agent" means The Bank of New York Trust Company, N.A. as Custodial Agent under the Collateral Agreement until a successor Custodial Agent shall have become such pursuant to the applicable provisions of the Collateral Agreement, and thereafter "Custodial Agent" shall mean the Person who is then the Custodial Agent thereunder.

"Declaration" means the Amended and Restated Declaration of Trust, dated as of February 16, 2007, among the Company, as sponsor, the Property Trustee, the Delaware Trustee and the Regular Trustees (each as named therein) and the several Holders (as defined therein).

"Deferred Contract Payments" has the meaning specified in Section 2.7(a).

"Early Settlement Event" has the meaning specified in the Thirteenth Supplemental Indenture.

"Failed Remarketing" has the meaning specified in the Thirteenth Supplemental Indenture.

"Federal Reserve" means (i) the Board of Governors of the Federal Reserve System, as from time to time constituted, or if at any time after the execution of this Agreement the Federal Reserve is not existing and performing the duties now assigned to it, then the body or bodies performing such duties at such time, or the Federal Reserve Bank of Richmond, or (ii) any successor Federal Reserve Bank (or successor body performing such duties) having primary jurisdiction over the Company.

"Guarantee Agreement" means the HITS Guarantee Agreement between the Company, as Guarantor, and The Bank of New York, as Guarantee Trustee named thereunder, dated as of the date hereof.

"HITS" means the Preferred HITS, Treasury HITS, and Corporate HITS.

"Holder" means a Holder (as such term is defined in the Declaration) of Preferred HITS or Treasury HITS.

"Indenture" means the Base Indenture, as amended from time to time, and the Thirteenth Supplemental Indenture, taken together, as amended or supplemented from time to time with respect to the Notes.

"Notes" has the meaning specified in the Declaration.

"Officers' Certificate" means a certificate signed by the President or a Vice President, and by the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of the Company or the duly authorized designee of any of the foregoing, and delivered to the Property Trustee.

"Opinion of Counsel" means a written opinion of legal counsel, who may be counsel to the Company (and who may be an employee of the Company), and who shall be reasonably acceptable to the Property Trustee. An Opinion of Counsel may rely on certificates as to matters of fact.

"Paying Agent" has the meaning specified in the Declaration.

"Payment Date" means (i) each March 15, June 15, September 15 and December 15 of each year occurring prior to the Stock Purchase Date, commencing on June 15, 2007, and (ii) the Stock Purchase Date.

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

"Pledged Notes" has the meaning specified in the Collateral Agreement.

"Pledged Securities" means the Pledged Notes and the Pledged Treasury Securities.

"Pledged Treasury Securities" has the meaning specified in the Collateral Agreement.

"Preferred HITS" has the meaning specified in the Declaration.

"Preferred Stock" means Floating Rate Non-Cumulative Preferred Stock, Series F, $100,000 liquidation preference per share, of the Company.

"Proceeds" has the meaning specified in the Collateral Agreement.

"Property Trustee" means The Bank of New York, not in its individual capacity but solely as Property Trustee under the Declaration until a successor Property Trustee shall have been appointed pursuant to the applicable provisions of the Declaration, and thereafter "Property Trustee" shall mean the Person who is then Property Trustee thereunder.

"Qualifying Treasury Securities" has the meaning specified in the Declaration.

"Regular Trustee" has the meaning specified in the Declaration.

"Remarketing" means a remarketing of Notes pursuant to Article III of the Thirteenth Supplemental Indenture.

"Remarketing Agent" has the meaning specified in the Declaration.

"Remarketing Agreement" means the Remarketing Agreement to be entered into prior to the first Remarketing among the Company, the Property Trustee and the Remarketing Agent.

"Remarketing Dates" means any of the five consecutive Business Days beginning on the seventh Business Day prior to each of February 15, 2012, May 15, 2012, August 15, 2012, November 15, 2012 and February 15, 2013, until the settlement of a Successful Remarketing; provided that following the occurrence of an Early Settlement Event, Remarketing Dates mean such earlier dates as determined pursuant to Section 3.4 of the Thirteenth Supplemental Indenture.

"Remarketing Settlement Date" means the February 15, May 15, August 15 or November 15 following the Remarketing Period in which a Successful Remarketing occurs.

"Securities Act" means the Securities Act of 1933 and any successor statute thereto, in each case as amended from time to time, and the rules and regulations promulgated thereunder.

"Securities Intermediary" means The Bank of New York Trust Company, N.A. as Securities Intermediary under the Collateral Agreement until a successor Securities Intermediary shall have become such pursuant to the applicable provisions of the Collateral Agreement, and thereafter "Securities Intermediary" shall mean such successor or any subsequent successor who is appointed pursuant to the Collateral Agreement.

"Securities Registrar" means The Bank of New York Trust Company, N.A. as Securities Registrar under the Collateral Agreement until a successor Securities Registrar shall have become such pursuant to the applicable provisions of the Collateral Agreement, and thereafter "Securities Registrar" shall mean such successor or any subsequent successor who is appointed pursuant to the Collateral Agreement.

"Senior Obligations" has the meaning specified in Section 7.1 of the Thirteenth Supplemental Indenture.

"Stated Amount" means, with respect to any one Stock Purchase Contract, $100,000.

"Stock Purchase Contract" means a contract having the Stated Amount obligating (i) the Company to sell, and the Trust (acting through the Property Trustee) to purchase, one share of Preferred Stock for $100,000 on the Stock Purchase Date and (ii) the Company to pay Contract Payments to the Trust, in each case on the terms and subject to the conditions set forth in Article II and Article V.

"Stock Purchase Date" means the first to occur of any March 15, June 15, September 15 and December 15, or if any such day is not a Business Day, the next Business Day, after (i) the Remarketing Settlement Date or (ii) the first Remarketing Date of a Failed Remarketing.

"Subordinated Notes" means the subordinated notes of the Company that may be issued to the Property Trustee as provided in Section 2.7(c).

"Successful Remarketing" has the meaning specified in the Thirteenth Supplemental Indenture.

"Termination Date" means the date, if any, on which a Termination Event occurs.

"Termination Event" means the occurrence of any of the following events at any time on or prior to the Stock Purchase Date:

(i) a judgment, decree or court order shall have been entered granting relief under the Bankruptcy Code, adjudicating the Company to be insolvent, or approving as properly filed a petition seeking reorganization or liquidation of the Company or any other similar applicable federal or state law and if such judgment, decree or order shall have been entered more than 60 days prior to the Stock Purchase Date, such decree or order shall have continued undischarged and unstayed for a period of 60 days;

(ii) a judgment, decree or court order for the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of the Company or of its property, or for the termination or liquidation of its affairs, shall have been entered and if such judgment, decree or order shall have been entered more than 60 days prior to the Stock Purchase Date, such judgment, decree or order shall have continued undischarged and unstayed for a period of 60 days;

(iii) the Company shall file a petition for relief under the Bankruptcy Code, or shall consent to the filing of a bankruptcy proceeding against it, or shall file a petition or answer or consent seeking reorganization or liquidation under the Bankruptcy Code or any other similar applicable federal or state law, or shall consent to the filing of any such petition, or shall consent to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of it or of its property, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due; or

(iv) the Company shall have redeemed the Preferred HITS and the Notes in whole but not in part pursuant to a Tax Event, a Capital Treatment Event or an Investment Company Event (each as defined in the Thirteenth Supplemental Indenture), in accordance with the terms of Section 2.6 of the Thirteenth Supplemental Indenture.

"Thirteenth Supplemental Indenture" means the Thirteenth Supplemental Indenture to the Base Indenture, dated as of the date hereof, between the Company and the Trustee, as amended or supplemented from time to time.

"Treasury HITS" has the meaning specified in the Declaration.

"Trust" means the Person named as the "Trust" in the first paragraph of this Agreement.

"Trustee" means The Bank of New York Trust Company, N.A., a national banking association, as successor to The Bank of New York, solely in its capacity as trustee pursuant to the Indenture and not in its individual capacity, or its successor in interest in such capacity, or any successor trustee appointed as provided in the Indenture.

"Vice President" means any vice president, whether or not designated by a number or a word or words added before or after the title "Vice President."

Section 1.2 *Form of Documents Delivered to Property Trustee.*

(a) In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents. Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which its certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

(b) Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Agreement, they may, but need not, be consolidated and form one instrument.

Section 1.3 *Notices.*

Any notice or communication is duly given if in writing and delivered in Person or mailed by first-class mail (registered or certified, return receipt requested), telecopier (with receipt confirmed) or overnight air courier guaranteeing next day delivery, to the others' address; *provided* that notice shall be deemed given to the Property Trustee only upon receipt thereof:

If to the Trust or the Property Trustee:

The Bank of New York,
as Property Trustee of
BAC Capital Trust XIII
c/o The Bank of New York Trust Company, N.A.
Towermarc Plaza, 2nd Floor
10161 Centurion Parkway
Jacksonville, FL 32256
Attention: Tina Gonzalez
Facsimile: (904) 645-1921

If to the Company:

Bank of America Corporation
100 North Tryon Street
NC1-007-07-06
Charlotte, North Carolina 28255
Attention: Corporate Treasury – Securities Administration
Facsimile: (704) 386-0270

If to the Collateral Agent:

The Bank of New York Trust Company, N.A.,
as Collateral Agent
Towermarc Plaza, 2nd Floor
10161 Centurion Parkway
Jacksonville, FL 32256
Attention: Tina Gonzalez
Facsimile: (904) 645-1921

Section 1.4 *Effect of Headings and Table of Contents.*

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

Section 1.5 *Successors and Assigns.*

All covenants and agreements in this Agreement by the Company and the Trust shall bind their respective successors and assigns, whether so expressed or not.

Section 1.6 *Separability Clause.*

In case any provision in this Agreement shall be invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions hereof and thereof shall not in any way be affected or impaired thereby.

Section 1.7 *Benefits of Agreement.*

Nothing contained in this Agreement, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder and, to the extent provided hereby, the holders of Senior Obligations and any Paying Agent, any benefits or any legal or equitable right, remedy or claim under this Agreement.

Section 1.8 *Governing Law; Submission to Jurisdiction.*

This Agreement shall be governed by and construed in accordance with the laws of the State of New York The Company and the Trust hereby submit to the nonexclusive jurisdiction of the United States District Court for the Southern District of New York and the courts of the State of New York (in each case sitting in New York County) for the purposes of all legal proceedings arising out of or relating to this Agreement or the transactions contemplated hereby. The Company and the Trust irrevocably waive, to the fullest extent permitted by applicable law, any objection that they may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

Section 1.9 *Legal Holidays.*

(a) In any case where any Payment Date shall not be a Business Day (notwithstanding any other provision of this Agreement), Contract Payments or other distributions shall not be paid on such date, but Contract Payments or such other distributions

shall be paid on the next succeeding Business Day with the same force and effect as if made on such Payment Date. No interest shall accrue or be payable by the Company or to the Property Trustee (on behalf of the Trust) for the period from and after any such Payment Date on such successive Business Day.

(b) In any case where the Stock Purchase Date shall not be a Business Day (notwithstanding any other provision of this Agreement), the Stock Purchase Contracts shall not be performed and shall not be effected on such date, but the Stock Purchase Contracts shall be performed on the next succeeding Business Day with the same force and effect as if made on such Stock Purchase Date.

Section 1.10 *No Waiver.*

No failure on the part of the Company, the Property Trustee, the Collateral Agent, the Securities Intermediary or any of their respective agents to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by the Company, the Property Trustee, the Collateral Agent, the Securities Intermediary or any of their respective agents of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies herein are cumulative and are not exclusive of any remedies provided by law.

Section 1.11 *No Consent to Assumption.*

Pursuant to the Declaration, the Property Trustee for and on behalf of the Trust hereby expressly withholds any consent to the assumption under Section 365 of the Bankruptcy Code or otherwise, of the Stock Purchase Contract by the Company or its trustee, receiver, liquidator or a Person performing similar functions in the event that the Company becomes the debtor under the Bankruptcy Code or subject to other similar state or Federal law providing for reorganization or liquidation.

Section 1.12 *No Recourse*

It is expressly understood and agreed by the parties hereto that (a) this Agreement is executed and delivered by The Bank of New York, not individually or personally but solely as Property Trustee of the Trust, in the exercise of the powers and authority conferred and vested in it, (b) each of the representations, warranties, covenants, undertakings and agreements herein made on the part of the Trust is made and intended not as personal representations, warranties, covenants, undertakings and agreements by The Bank of New York but is made and intended for the purpose of binding only the Trust, (c) nothing herein contained shall be construed as creating any liability on The Bank of New York, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto and by any Person claiming by, through or under the parties hereto and (d) under no circumstances shall The Bank of New York be personally liable for the payment of any indebtedness or expenses of the Trust or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Trust under this Agreement or any other related documents.

ARTICLE II

THE STOCK PURCHASE CONTRACTS

Section 2.1 *Issuance of Stock Purchase Contracts; Transferability; Assignment; Amendment.*

(a) Contemporaneously with the execution and delivery of this Agreement, the Company hereby issues 7,001 Stock Purchase Contracts and may issue up to 5,000 Stock Purchase Contracts in the future having the terms and conditions set forth herein to the Trust (acting through the Property Trustee), which by its execution and delivery of this Agreement is entering into and agreeing to be bound by the Stock Purchase Contracts. No certificates will be issued to evidence the Stock Purchase Contracts.

(b) To the fullest extent permitted by law, other than a transfer in connection with (i) a merger, consolidation, amalgamation or replacement of the Trust or (ii) any conveyance, transfer or lease by the Trust of its properties and assets substantially as an entirety to, and the assumption by, a successor entity pursuant to Section 9.5 of the Declaration, any attempted transfer of the Stock Purchase Contracts shall be void.

(c) To the fullest extent permitted by law, any assignment by the Trust of its rights hereunder, other than an assignment of this Agreement in connection with a merger, consolidation, amalgamation or replacement of the Trust or any conveyance, transfer or lease by the Trust of its properties and assets substantially as an entirety to, and the assumption by, a successor entity pursuant to Section 9.5 of the Declaration, shall be void.

(d) No amendment, modification or waiver of any provision of this Agreement shall be effective against either party hereto unless it is duly authorized by resolution of the Board of Directors of the Company and permitted under Section 6.1 of the Declaration.

Section 2.2 *Purchase of Preferred Stock; Payment of Purchase Price.*

(a) Each outstanding Stock Purchase Contract shall obligate the Trust (acting through the Property Trustee) to purchase, and the Company to sell, on the Stock Purchase Date at a price equal to the Stated Amount, one share of Preferred Stock, unless a Termination Event shall have occurred.

(b) If there has been a Successful Remarketing, the Trust will satisfy its obligations under Section 2.2(a) to pay the purchase price in respect of the outstanding Stock Purchase Contracts out of (i) the Proceeds at maturity of the Pledged Treasury Securities and (ii) to the extent of the excess of the purchase price over the amount of the Proceeds at maturity of the Pledged Treasury Securities, the Bank of America Deposit; *provided* that in the event that a receiver has been appointed for the purpose of liquidating or winding up the affairs of The Bank of New York while The Bank of New York is holding the Bank of America Deposit, in lieu of payment of the Bank of America Deposit the Trust shall cause the Collateral Agent to assign its rights in the Bank of America Deposit to the Company on the Stock Purchase Date to the extent of such amount required in full satisfaction of the Trust's obligation to pay the Bank of America Deposit pursuant to this clause (ii).

(c) If there is a Failed Remarketing, the Collateral Agent for the benefit of the Company reserves all of its rights as a secured party with respect to the Notes and, subject to applicable law and Section 2.2(d), may, among other things, (i) retain such Notes or their Proceeds in full satisfaction of the Trust's obligations under the Stock Purchase Contracts or (ii) sell such Notes in one or more public or private sales as permitted by applicable law, in order to satisfy the Trust's obligations under Section 2.2(a) to pay the purchase price in respect of the Stock Purchase Contracts to the extent not satisfied out of the Proceeds at maturity of the Pledged Treasury Securities.

(d) The obligations of the Trust to pay the purchase price in respect of the Stock Purchase Contracts are non-recourse obligations and are payable solely out of the Proceeds of any Collateral pledged to secure the obligations of the Trust assignment of the Bank of America Deposit as set forth in this Section 2.2, and in no event will the Property Trustee be liable for any deficiency between the Proceeds of the disposition of Collateral and the purchase price in respect of the Stock Purchase Contracts.

(e) The Company shall not be obligated to cause the issuance of any share of Preferred Stock in respect of a Stock Purchase Contract or deliver any certificate therefor to the Property Trustee unless the Company shall have received payment for the share of Preferred Stock to be purchased thereunder in the manner herein set forth.

Section 2.3 *Issuance of Preferred Stock.*

(a) Unless a Termination Event shall have occurred, on the Stock Purchase Date upon receipt of the aggregate purchase price payable on all outstanding Stock Purchase Contracts, the Company shall cause to be issued and deposited with the Property Trustee (or its nominee), one or more certificates representing newly issued shares of Preferred Stock registered in the name of the Property Trustee (or its nominee) as custodian for the Trust to which the Trust is entitled hereunder.

Section 2.4 *Termination Event; Notice.*

(a) The Stock Purchase Contracts and all obligations and rights of the Company and the Trust (including the obligations and rights of the Property Trustee acting on behalf of the Trust) thereunder, including, without limitation, the right of the Trust to receive and the obligation of the Company to pay any Contract Payments (including any accrued and unpaid Contract Payments), and the rights and obligations of the Trust to purchase shares of Preferred Stock, shall immediately and automatically terminate, without the necessity of any notice or action by the Trust, the Property Trustee or the Company, if a Termination Event shall have occurred on or prior to the Stock Purchase Date.

(b) Upon the occurrence of a Termination Event, the Company shall promptly but in no event later than five Business Days thereafter give written notice to the Property Trustee and the Collateral Agent of such event.

Section 2.5 *Charges and Taxes.*

The Company will pay all stock transfer and similar taxes attributable to the initial issuance and delivery of the shares of Preferred Stock pursuant to the Stock Purchase Contracts; *provided* that the Company shall not be required to pay any such tax or taxes that may be payable in respect of any issuance of a share of Preferred Stock in a name other than in the name of the Property Trustee or its nominee, as custodian for the Trust, and the Company shall not be required to issue or deliver such share certificates unless or until the Person or Persons requesting the issuance thereof shall have paid to the Company, in addition to any Stated Amount, the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

Section 2.6 *Contract Payments.*

(a) Subject to Section 2.7, the Company shall pay, in arrears on each Payment Date, or if such day is not a Business Day, the next Business Day, the Contract Payments payable in respect of each Stock Purchase Contract to the Property Trustee or upon its order. The Contract Payments will be payable by wire transfer to the account designated by the Property Trustee by a prior written notice to the Company. The Contract Payments will accrue from and including February 16, 2007 or from and including the most recent Payment Date on which Contract Payments have been paid or duly provided for (subject to deferral as set forth in Section 2.7) to but excluding the next succeeding Payment Date. Contract Payments will be calculated on the basis of a 360-day year for the number of days that have actually elapsed.

(b) The Company's obligations with respect to Contract Payments, if any, will be subordinated and junior in right of payment to the Company's obligations under any Senior Obligations to the extent and in the manner set forth in Sections 2.6(b) through (l) and will rank *pari passu* with the following obligations (i) the Notes, (ii) the Company's Remarketable Fixed Rate Notes due 2043, (iii) the Company's Guarantee in respect of the HITS, (iv) the Company's Guarantee in respect of the HITS issued by BAC Capital Trust XIV, (v) the Company's Guarantee in respect of the Trust Common Securities issued by the Trust, (vi) the Company's Guarantee in respect of the Trust Common Securities issued by BAC Capital Trust XIV and (vii) the Stock Purchase Contracts issued by the Company in respect of the HITS issued by BAC Capital Trust XIV.

(c) In the event of (i) any insolvency, bankruptcy, receivership, liquidation, reorganization, readjustment, composition or other similar proceeding with respect to the Company, its creditors or its property, (ii) any proceeding for the voluntary or involuntary liquidation, dissolution or other winding up of the Company, whether or not involving insolvency or bankruptcy proceedings, (iii) any assignment by the Company for the benefit of creditors, or (iv) any other marshalling of the assets of the Company:

(A) all Senior Obligations (including any interest thereon accruing after the commencement of any such proceedings) shall first be paid in full before any payment or distribution, whether in cash, securities or other property, shall be made to the Property Trustee in respect of Contract Payments;

(B) any payment or distribution, whether in cash, securities or other property that would otherwise (but for these subordination provisions) be payable or deliverable in

respect of Contract Payments shall be paid or delivered directly to the holders of Senior Obligations in accordance with the priorities then existing among such holders until all Senior Obligations (including any interest thereon accruing after the commencement of any such proceedings) shall have been paid in full;

(C) after payment in full of all sums owing with respect to Senior Obligations, the Property Trustee, together with the holders of any obligations of the Company ranking on a parity with the Contract Payments, shall be entitled to be paid from the remaining assets of the Company the amounts at the time due and owing on account of unpaid Contract Payments and interest thereon and such other obligations before any payment or other distribution, whether in cash, securities or other property, shall be made on account of any capital stock of the Company or any obligations of the Company ranking junior to the Company's obligations to make Contract Payments under the Stock Purchase Contracts and such other obligations; and

(D) in the event that, notwithstanding the foregoing, any payment or distribution of any character or any security, whether in cash, securities or other property, shall be received by the Property Trustee or the Trust in contravention of any of the terms hereof such payment or distribution or security shall be received in trust for the benefit of, and shall be paid over or delivered and transferred to, the holders of the Senior Obligations at the time outstanding in accordance with the priorities then existing among such holders for application to the payment of all Senior Obligations remaining unpaid, to the extent necessary to pay all such Senior Obligations in full. In the event of the failure of the Property Trustee or the Trust to endorse or assign any such payment, distribution or security, each holder of Senior Obligations is hereby irrevocably authorized to endorse or assign the same.

(d) For purposes of Sections 2.6(b) through (l), the words "cash, securities or other property" shall not be deemed to include shares of stock of the Company as reorganized or readjusted, or securities of the Company or any other Person provided for by a plan of reorganization or readjustment, the payment of which is subordinated at least to the extent provided in Sections 2.6(b) through (l) with respect to such Contract Payments on the Stock Purchase Contracts to the payment of all Senior Obligations that may at the time be outstanding; *provided* that (i) the indebtedness or guarantee of indebtedness, as the case may be, that constitutes Senior Obligations is assumed by the Person, if any, resulting from any such reorganization or readjustment, and (ii) the rights of the holders of the Senior Obligations are not, without the consent of each such holder adversely affected thereby, altered by such reorganization or readjustment.

(e) Any failure by the Company to make any payment on or perform any other obligation under Senior Obligations, other than any indebtedness incurred by the Company or assumed or guaranteed, directly or indirectly, by the Company for money borrowed (or any deferral, renewal, extension or refunding thereof) or any indebtedness or obligation as to which the provisions of Sections 2.6(b) through (l) shall have been waived by the Company in the instrument or instruments by which the Company incurred, assumed, guaranteed or otherwise created such indebtedness or obligation, shall not be deemed a default or event of default if (i) the Company shall be disputing its obligation to make such payment or perform such obligation

and (ii) either (A) no final judgment relating to such dispute shall have been issued against the Company that is in full force and effect and is not subject to further review, including a judgment that has become final by reason of the expiration of the time within which a party may seek further appeal or review, or (B) in the event a judgment that is subject to further review or appeal has been issued, the Company shall in good faith be prosecuting an appeal or other proceeding for review and a stay of execution shall have been obtained pending such appeal or review.

(f) Subject to the irrevocable payment in full of all Senior Obligations, the Property Trustee on behalf of the Trust shall be subrogated (equally and ratably with the holders of all obligations of the Company that by their express terms are subordinated to Senior Obligations of the Company to the same extent as payment of the Contract Payments in respect of the Stock Purchase Contracts is subordinated and that are entitled to like rights of subrogation) to the rights of the holders of Senior Obligations to receive payments or distributions of cash, securities or other property of the Company applicable to the Senior Obligations until all such Contract Payments owing on the Stock Purchase Contracts shall be paid in full, and as between the Company, its creditors other than holders of such Senior Obligations and the Property Trustee, no such payment or distribution made to the holders of Senior Obligations by virtue of Sections 2.6(b) through (l) that otherwise would have been made to the Property Trustee shall be deemed to be a payment by the Company on account of such Senior Obligations, it being understood that the provisions of Sections 2.6(b) through (l) are intended solely for the purpose of defining the relative rights of the Property Trustee, on the one hand, and the holders of Senior Obligations, on the other hand.

(g) Nothing contained in Sections 2.6(b) through (l) or elsewhere in this Agreement is intended to or shall impair, as among the Company, its creditors other than the holders of Senior Obligations and the Property Trustee, the obligation of the Company, which is absolute and unconditional, to pay to the Property Trustee such Contract Payments on the Stock Purchase Contracts 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 Property Trustee and creditors of the Company other than the holders of Senior Obligations, nor shall anything herein or therein prevent the Property Trustee from exercising all remedies otherwise permitted by applicable law upon default under this Agreement, subject to the rights, if any, under Sections 2.6(b) through (l), of the holders of Senior Obligations in respect of cash, securities or other property of the Company received upon the exercise of any such remedy.

(h) Upon payment or distribution of assets of the Company referred to in Sections 2.6(b) through (l), the Property Trustee shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which any such dissolution, winding up, liquidation or reorganization proceeding affecting the affairs of the Company is pending or upon a certificate of the trustee in bankruptcy, receiver, conservator, assignee for the benefit of creditors, liquidating trustee or other Person making any payment or distribution, delivered to the Property Trustee, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of the Senior Obligations and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to Sections 2.6(b) through (l).

(i) The Property Trustee 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 (or a trustee or representative on behalf of such holder) to establish that such notice has been given by a holder of Senior Obligations or a trustee or representative on behalf of any such holder or holders. In the event that the Property Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Senior Obligations to participate in any payment or distribution pursuant to Section 2.6(b) through (l), the Property Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Property Trustee as to the amount of 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 Sections 2.6(b) through (l), and, if such evidence is not furnished, the Property Trustee may defer payment to such Person pending judicial determination as to the right of such Person to receive such payment.

(j) Nothing contained in Sections 2.6(b) through (l) shall affect the obligations of the Company to make, or prevent the Company from making, payment of the Contract Payments, except as otherwise provided in Sections 2.6(b) through (l).

(k) The Bank of New York, or any successor Property Trustee, in its individual capacity shall be entitled to all the rights set forth in this Section with respect to any Senior Obligations at the time held by it, to the same extent as any other holder of Senior Obligations and nothing in this Agreement shall deprive The Bank of New York, or any successor Property Trustee of any of its rights as such holder.

(l) No right of any present or future holder of any Senior Obligations to enforce the subordination herein shall at any time or in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any noncompliance by the Company with the terms, provisions and covenants of this Agreement, regardless of any knowledge thereof that any such holder may have or be otherwise charged with.

(m) Nothing in this Section 2.6 shall apply to claims of, or payments to, the Property Trustee under or pursuant to Section 2.7.

(n) With respect to the holders of Senior Obligations, (i) the duties and obligations of the Property Trustee shall be determined solely by the express provisions of this Agreement; (ii) the Property Trustee shall not be liable to any such holders if it shall, acting in good faith, mistakenly pay over or distribute to the Holders or to the Company or any other Person cash, securities or other property to which any holders of Senior Obligations shall be entitled by virtue of this Section 2.6 or otherwise; (iii) no implied covenants or obligations shall be read into this Agreement against the Property Trustee; and (iv) the Property Trustee shall not be deemed to be a fiduciary as to such holders.

(o) Nothing in this Section 2.6 shall apply to any payment or distribution, whether in cash, securities or other property, made to, or paid over or distributed by, any Paying Agent in respect of Contract Payments or otherwise. The Paying Agent shall owe no duty, fiduciary or otherwise, to any holder of Senior Obligations and shall not be liable to any holders of Senior Obligations if it shall pay over or distribute to the Holders or to the Company or any other Person

cash, securities or other property to which any holders of Senior Obligations shall otherwise be entitled by virtue of this Section 2.6 or otherwise; and no implied covenants or obligations shall be read into this Agreement against the Paying Agent.

Section 2.7 *Deferral of Contract Payments.*

(a) The Company shall have the right (which will be exercised if so directed by the Federal Reserve), at any time prior to the Stock Purchase Date, to defer the payment of any or all of the Contract Payments otherwise payable on any Payment Date, but only if the Company shall give the Property Trustee and the Regular Trustees (with a copy to the Paying Agent) written notice of its election to defer each such deferred Contract Payment (specifying the amount to be deferred) at least ten Business Days prior to the earlier of (i) the next succeeding Payment Date or (ii) the date the Property Trustee and the Regular Trustees are required to give notice of any record date or Payment Date with respect to any class of HITS to the New York Stock Exchange or other applicable self regulatory organization or to the Holders, but in any event not less than one Business Day prior to such record date. Any Contract Payments so deferred shall, to the extent permitted by law, accrue interest thereon at a floating rate per annum equal to Three-Month LIBOR plus 0.25%, compounding on each succeeding Payment Date, until paid in full (such deferred installments of Contract Payments, if any, together with the interest, if any, accrued thereon, being referred to herein as the "*Deferred Contract Payments*"). Deferred Contract Payments, if any, shall be due on the next succeeding Payment Date except to the extent that payment is deferred pursuant to this Section 2.7, except as provided under Section 1.9. No Contract Payments may be deferred to a date that is after the Stock Purchase Date and no such deferral period may end other than on a Payment Date, except as provided under Section 1.9. If the Stock Purchase Contracts are terminated upon the occurrence of a Termination Event, the Trust's right to receive Contract Payments, if any, and any Deferred Contract Payments, will terminate.

(b) In the event that the Company elects to defer the payment of Contract Payments on the Stock Purchase Contracts until a Payment Date prior to the Stock Purchase Date, then all Deferred Contract Payments, if any, shall be payable to the Property Trustee on behalf of the Trust on such Payment Date, except as provided under Section 1.9.

(c) In the event that the Company elects to defer the payment of Contract Payments on the Stock Purchase Contracts and such deferral is continuing on the Stock Purchase Date, the Property Trustee will receive on the Stock Purchase Date in lieu of a cash payment, in addition to the shares of Preferred Stock to be issued pursuant to Section 2.3, Subordinated Notes that will (i) have a principal amount equal to the aggregate amount of Deferred Contract Payments at the Stock Purchase Date, (ii) mature on the later of March 15, 2015 or five years after commencement of the deferral period, (iii) bear interest at a floating rate per annum equal to Three-Month LIBOR plus 0.25% (subject to deferral on the same basis as the Contract Payments), (iv) be subordinate and rank junior in right of payment to all of the Company's Senior Obligations on the same basis as the Contract Payments, and (v) be redeemable at the option of the Company at any time or from time to time prior to their stated maturity at a redemption price equal to the principal amount thereof plus any accrued and unpaid interest to the date of redemption; *provided* that the Company shall register such Subordinated Notes under the Securities Act prior to the delivery thereof to the Property Trustee unless they may be so delivered pursuant to an exemption or exception from registration thereunder.

(d) In the event the Company exercises its option to defer the payment of Contract Payments then, until the earlier of (x) the Termination Date or (y) the date on which the Company shall have either paid all Deferred Contract Payments to the Property Trustee in cash or repaid all amounts outstanding on the Subordinated Notes, the Company shall not (i) 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:

(A) 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;

(B) 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;

(C) 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 the security being converted or exchanged; or

(D) payment by the Company under any guarantee agreement executed for the benefit of the holders of the HITS;

or (ii) 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 Notes; or (iii) make any payment under any guarantee that ranks equally with or junior to the guarantee agreement executed for the benefit of the holders of the HITS.

ARTICLE III

REMEDIES

Section 3.1 *Unconditional Right of the Property Trustee to Receive Contract Payments and to Purchase Shares of Preferred Stock; Direct Action by Holders of Preferred HITS or Treasury HITS.*

The Property Trustee on behalf of the Trust shall have the right, which is absolute and unconditional, (i) subject to Article II, to receive each Contract Payment with respect to each Stock Purchase Contract on the respective Payment Date and (ii) except upon and following a Termination Event, to purchase one share of Preferred Stock pursuant to such Stock Purchase Contract and, in each such case, to institute suit for the enforcement of any such right to receive Contract Payments and the right to purchase such share of Preferred Stock, and such rights shall not be impaired without its consent. Up to and including the Stock Purchase Date, or the earlier termination of the Stock Purchase Contracts, any Holder shall have the right, upon default in the payment of any Contract Payment with respect to any Stock Purchase Contract on the respective Payment Date (subject to Article II), to institute a suit directly against the Company for

enforcement of payment to such Holder of Contract Payments on Stock Purchase Contracts (or interests therein) having a stated amount equal to the aggregate Liquidation Amount (as defined in the Declaration) of the HITS held by such Holder, but without first directing the Property Trustee to enforce the terms of the Stock Purchase Contracts or suing the Company to enforce the Property Trustee's rights under the Stock Purchase Contracts.

Section 3.2 *Restoration of Rights and Remedies.*

If the Property Trustee has instituted any proceeding to enforce any right or remedy under this Agreement and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Property Trustee, then and in every such case, subject to any determination in such proceeding, the Company and the Property Trustee shall be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Property Trustee shall continue as though no such proceeding had been instituted.

Section 3.3 *Rights and Remedies Cumulative.*

No right or remedy herein conferred upon or reserved to the Property Trustee is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 3.4 *Delay or Omission Not Waiver.*

No delay or omission of the Property Trustee to exercise any right upon a default or remedy upon a default shall impair any such right or remedy or constitute a waiver of any such right. Every right and remedy given by this Article III or by law to the Property Trustee may be exercised from time to time, and as often as may be deemed expedient, by the Property Trustee.

Section 3.5 *Waiver of Stay or Extension Laws.*

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Agreement; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Property Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE IV

CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

Section 4.1 *Covenant Not to Consolidate, Merge, Convey, Transfer or Lease Property Except under Certain Conditions.*

The Company covenants that it will not consolidate with, convert into, or merge with and into, any other entity or sell, assign, transfer, lease or convey all or substantially all of its properties and assets to any Person or entity, unless:

(a) the successor shall expressly assume all the obligations of the Company under the Stock Purchase Contracts, this Agreement, the Collateral Agreement, the Declaration, the Indenture (including any supplement thereto), the Guarantee Agreement and the Remarketing Agreement by one or more supplemental agreements in form reasonably satisfactory to the Property Trustee, executed and delivered to the Property Trustee by such corporation;

(b) such successor corporation shall not, immediately after such consolidation, conversion, merger, sale, assignment, transfer, lease or conveyance, be in default of payment obligations under the Stock Purchase Contracts, this Agreement, the Collateral Agreement, the Declaration or the Remarketing Agreement or in material default in the performance of any other covenants under any of the foregoing agreements; and

(c) the successor entity shall have reserved sufficient authorized and unissued shares of preferred stock having substantially the same terms and conditions as the Preferred Stock such that the Trust will receive, on the Stock Purchase Date, shares of preferred stock having substantially the same rights as the Preferred Stock that the Trust would have received had such merger, consolidation or other transaction not occurred.

Section 4.2 *Rights and Duties of Successor Corporation.*

In case of any such merger, consolidation, share exchange, sale, assignment, transfer, lease or conveyance and upon any such assumption by a successor corporation in accordance with Section 4.1, such successor entity shall succeed to and be substituted for the Company with the same effect as if it had been named herein as the Company.

Section 4.3 *Officers' Certificate and Opinion of Counsel Given to Property Trustee.*

The Property Trustee, subject to Section 4.1 and Section 4.2, shall receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any such merger, consolidation, share exchange, sale, assignment, transfer, lease or conveyance, and any such assumption, complies with the provisions of this Article IV and that all conditions precedent to the consummation of any such merger, consolidation, share exchange, sale, assignment, transfer, lease or conveyance have been met.

ARTICLE V

COVENANTS

Section 5.1 *Performance under Stock Purchase Contracts.*

The Company covenants and agrees for the benefit of the Trust that it will duly and punctually perform its obligations under the Stock Purchase Contracts in accordance with the terms of the Stock Purchase Contracts and this Agreement.

Section 5.2 *Company to Reserve Preferred Stock.*

The Company shall at all times prior to the Stock Purchase Date reserve and keep available, free from preemptive rights, out of its authorized but unissued Preferred Stock the full number of shares of Preferred Stock issuable against tender of payment for such shares of Preferred Stock in respect of all Stock Purchase Contracts then outstanding.

Section 5.3 *Covenants as to Preferred Stock.*

The Company covenants that all shares of Preferred Stock that may be issued against tender of payment for such shares of Preferred Stock in respect of any Stock Purchase Contract will, upon issuance, be duly authorized, validly issued, fully paid and nonassessable.

Section 5.4 *Statements of Officers of the Company as to Default.*

The Company will deliver to the Property Trustee, within 120 days after the end of each fiscal year of the Company ending after the date hereof, an Officers' Certificate, stating whether or not to the knowledge of the signers thereof the Company is in default in the performance and observance of any of the terms, provisions and conditions hereof, and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

Section 5.5 *Certain Rights of the Property Trustee.*

The rights, privileges, protections, indemnities and immunities afforded the Property Trustee under the Declaration are hereby incorporated herein as if set forth herein in full.

* * * *

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

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

Bank of America Corporation

By: /s/ Ann J. Travis
Name: Ann J. Travis
Title: Senior Vice President

BAC Capital Trust XIII

By: The Bank of New York, not in its individual capacity but solely as Property Trustee

By: /s/ Alexander Pabon
Name: Alexander Pabon
Title: Assistant Vice President

Exhibit 4.9

Stock Purchase Contract Agreement

between

BANK OF AMERICA CORPORATION

and

BAC CAPITAL TRUST XIV,
acting through The Bank of New York,
as Property Trustee

Dated as of February 16, 2007

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STOCK PURCHASE CONTRACT AGREEMENT, dated as of February 16, 2007, between **BANK OF AMERICA CORPORATION**, a Delaware corporation (the *"Company"*), having its principal office at 100 North Tryon Street, Charlotte, North Carolina 28255, and BAC Capital Trust XIV, a Delaware statutory trust (the *"Trust"*), acting through **THE BANK OF NEW YORK**, a New York banking corporation, not in its individual capacity but solely as Property Trustee of the Trust (the *"Property Trustee"*).

RECITALS OF THE COMPANY

The Company has duly authorized the execution and delivery of this Agreement.

All things necessary to make the Stock Purchase Contracts (as defined herein) the valid obligations of the Company, and to constitute these presents a valid agreement of the Company, in accordance with its terms, have been done.

NOW, THEREFORE, THIS STOCK PURCHASE CONTRACT AGREEMENT WITNESSETH: For and in consideration of the agreements and obligations set forth herein and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed as follows:

ARTICLE I

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.1 *Definitions*.

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular.

(b) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles, and the term "generally accepted accounting principles" with respect to any computation required or permitted hereunder shall mean such accounting principles that are generally accepted in the United States at the date or time of such computation; *provided* that when two or more principles are so generally accepted, it shall mean that set of principles consistent with those in use by the Company.

(c) The words "*herein*," "*hereof*" and "*hereunder*" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

(d) Unless the context otherwise requires, any references to an "Article," a "Section" or another subdivision refers to an Article, a Section or another subdivision, as the case may be, of this Stock Purchase Contract Agreement.

"Agreement" means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more agreements supplemental hereto entered into pursuant to the applicable provisions hereof.

"Bank of America Deposit" means an interest-bearing deposit of cash or cash equivalents with Bank of America, N.A. to be made on the Remarketing Settlement Date and payable on the Stock Purchase Date that will provide the Trust with sufficient cash on the Stock Purchase Date to purchase the Preferred Stock and to make the final payment due to holders of Preferred HITS (other than those that elected to exchange their securities) on such date. The deposit shall be established in the name of the Collateral Agent pursuant to an agreement naming the Collateral Agent as customer and providing that Bank of America, N.A.'s jurisdiction for purposes of Article 9 of the Uniform Commercial Code is New York.

"Bankruptcy Code" means the Bankruptcy Reform Act of 1978, Title 11 of the United States Code, as amended from time to time, or any other law of the United States that from time to time provides a uniform system of bankruptcy laws.

"Base Indenture" means the Restated Junior Subordinated Debt Securities Indenture, dated as of November 1, 2001, between the Company and The Bank of New York Trust Company, N.A., as successor trustee.

"Board of Directors" means the board of directors of the Company or any committee of that board of directors of the Company duly authorized to act hereunder.

"Business Day" means any day other than a Saturday, Sunday or any other day on which banking institutions and trust companies in New York, New York or Charlotte, North Carolina are permitted or required by law or executive order to close.

"Code" means the Internal Revenue Code of 1986, as amended.

"Collateral" has the meaning specified in the Collateral Agreement.

"Collateral Agent" means The Bank of New York Trust Company, N.A. as Collateral Agent, under the Collateral Agreement until a successor Collateral Agent shall have become such pursuant to the applicable provisions of the Collateral Agreement, and thereafter "Collateral Agent" shall mean the Person who is then the Collateral Agent thereunder.

"Collateral Agreement" means the Collateral Agreement, dated as of the date hereof, among the Company, the Trust (acting through the Property Trustee), the Collateral Agent, the Custodial Agent, the Securities Intermediary and the Securities Registrar, as amended from time to time.

"Company" means the Person named as the "Company" in the first paragraph of this Agreement until a successor shall have become such pursuant to the applicable provision of this Agreement, and thereafter "Company" shall mean such successor.

"Contract Payments" means the payments payable by the Company on the Payment Dates in respect of each outstanding Stock Purchase Contract, at the rate of 0.15% per annum of the Stated Amount of each outstanding Stock Purchase Contract.

"Corporate HITS" has the meaning specified in the Declaration.

"Custodial Agent" means The Bank of New York Trust Company, N.A. as Custodial Agent under the Collateral Agreement until a successor Custodial Agent shall have become such pursuant to the applicable provisions of the Collateral Agreement, and thereafter "Custodial Agent" shall mean the Person who is then the Custodial Agent thereunder.

"Declaration" means the Amended and Restated Declaration of Trust, dated as of February 16, 2007, among the Company, as sponsor, the Property Trustee, the Delaware Trustee and the Regular Trustees (each as named therein) and the several Holders (as defined therein).

"Deferred Contract Payments" has the meaning specified in Section 2.7(a).

"Early Settlement Event" has the meaning specified in the Fourteenth Supplemental Indenture.

"Failed Remarketing" has the meaning specified in the Fourteenth Supplemental Indenture.

"Federal Reserve" means (i) the Board of Governors of the Federal Reserve System, as from time to time constituted, or if at any time after the execution of this Agreement the Federal Reserve is not existing and performing the duties now assigned to it, then the body or bodies performing such duties at such time, or the Federal Reserve Bank of Richmond, or (ii) any successor Federal Reserve Bank (or successor body performing such duties) having primary jurisdiction over the Company.

"Guarantee Agreement" means the HITS Guarantee Agreement between the Company, as Guarantor, and The Bank of New York, as Guarantee Trustee named thereunder, dated as of the date hereof.

"HITS" means the Preferred HITS, Treasury HITS, and Corporate HITS.

"Holder" means a Holder (as such term is defined in the Declaration) of Preferred HITS or Treasury HITS.

"Indenture" means the Base Indenture, as amended from time to time, and the Fourteenth Supplemental Indenture, taken together, as amended or supplemented from time to time with respect to the Notes.

"Notes" has the meaning specified in the Declaration.

"Officers' Certificate" means a certificate signed by the President or a Vice President, and by the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of the Company or the duly authorized designee of any of the foregoing, and delivered to the Property Trustee.

"Opinion of Counsel" means a written opinion of legal counsel, who may be counsel to the Company (and who may be an employee of the Company), and who shall be reasonably acceptable to the Property Trustee. An Opinion of Counsel may rely on certificates as to matters of fact.

"Paying Agent" has the meaning specified in the Declaration.

"Payment Date" means (i) each March 15 and September 15 of each year occurring prior to the Stock Purchase Date, commencing on September 15, 2007, and (ii) the Stock Purchase Date.

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

"Pledged Notes" has the meaning specified in the Collateral Agreement.

"Pledged Securities" means the Pledged Notes and the Pledged Treasury Securities.

"Pledged Treasury Securities" has the meaning specified in the Collateral Agreement.

"Preferred HITS" has the meaning specified in the Declaration.

"Preferred Stock" means Adjustable Rate Non-Cumulative Preferred Stock, Series G, $100,000 liquidation preference per share, of the Company.

"Proceeds" has the meaning specified in the Collateral Agreement.

"Property Trustee" means The Bank of New York, not in its individual capacity but solely as Property Trustee under the Declaration until a successor Property Trustee shall have been appointed pursuant to the applicable provisions of the Declaration, and thereafter "Property Trustee" shall mean the Person who is then Property Trustee thereunder.

"Qualifying Treasury Securities" has the meaning specified in the Declaration.

"Regular Trustee" has the meaning specified in the Declaration.

"Remarketing" means a remarketing of Notes pursuant to Article III of the Fourteenth Supplemental Indenture.

"Remarketing Agent" has the meaning specified in the Declaration.

"Remarketing Agreement" means the Remarketing Agreement to be entered into prior to the first Remarketing among the Company, the Property Trustee and the Remarketing Agent.

"Remarketing Dates" means any of the five consecutive Business Days beginning on the seventh Business Day prior to each of February 15, 2012, May 15, 2012, August 15, 2012, November 15, 2012 and February 15, 2013, until the settlement of a Successful Remarketing; provided that following the occurrence of an Early Settlement Event, Remarketing Dates mean such earlier dates as determined pursuant to Section 3.4 of the Fourteenth Supplemental Indenture.

"Remarketing Settlement Date" means the February 15, May 15, August 15 or November 15 following the Remarketing Period in which a Successful Remarketing occurs.

"Securities Act" means the Securities Act of 1933 and any successor statute thereto, in each case as amended from time to time, and the rules and regulations promulgated thereunder.

"Securities Intermediary" means The Bank of New York Trust Company, N.A. as Securities Intermediary under the Collateral Agreement until a successor Securities Intermediary shall have become such pursuant to the applicable provisions of the Collateral Agreement, and thereafter "Securities Intermediary" shall mean such successor or any subsequent successor who is appointed pursuant to the Collateral Agreement.

"Securities Registrar" means The Bank of New York Trust Company, N.A. as Securities Registrar under the Collateral Agreement until a successor Securities Registrar shall have become such pursuant to the applicable provisions of the Collateral Agreement, and thereafter "Securities Registrar" shall mean such successor or any subsequent successor who is appointed pursuant to the Collateral Agreement.

"Senior Obligations" has the meaning specified in Section 7.1 of the Fourteenth Supplemental Indenture.

"Stated Amount" means, with respect to any one Stock Purchase Contract, $100,000.

"Stock Purchase Contract" means a contract having the Stated Amount obligating (i) the Company to sell, and the Trust (acting through the Property Trustee) to purchase, one share of Preferred Stock for $100,000 on the Stock Purchase Date and (ii) the Company to pay Contract Payments to the Trust, in each case on the terms and subject to the conditions set forth in Article II and Article V.

"Stock Purchase Date" means the first to occur of any March 15, June 15, September 15 and December 15, or if any such day is not a Business Day, the next Business Day, after (i) the Remarketing Settlement Date or (ii) the first Remarketing Date of a Failed Remarketing.

"Subordinated Notes" means the subordinated notes of the Company that may be issued to the Property Trustee as provided in Section 2.7(c).

"Successful Remarketing" has the meaning specified in the Fourteenth Supplemental Indenture.

"Termination Date" means the date, if any, on which a Termination Event occurs.

"Termination Event" means the occurrence of any of the following events at any time on or prior to the Stock Purchase Date:

(i) a judgment, decree or court order shall have been entered granting relief under the Bankruptcy Code, adjudicating the Company to be insolvent, or approving as properly filed a petition seeking reorganization or liquidation of the Company or any other similar applicable federal or state law and if such judgment, decree or order shall have been entered more than 60 days prior to the Stock Purchase Date, such decree or order shall have continued undischarged and unstayed for a period of 60 days;

(ii) a judgment, decree or court order for the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of the Company or of its property, or for the termination or liquidation of its affairs, shall have been entered and if such judgment, decree or order shall have been entered more than 60 days prior to the Stock Purchase Date, such judgment, decree or order shall have continued undischarged and unstayed for a period of 60 days;

(iii) the Company shall file a petition for relief under the Bankruptcy Code, or shall consent to the filing of a bankruptcy proceeding against it, or shall file a petition or answer or consent seeking reorganization or liquidation under the Bankruptcy Code or any other similar applicable federal or state law, or shall consent to the filing of any such petition, or shall consent to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of it or of its property, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due; or

(iv) the Company shall have redeemed the Preferred HITS and the Notes in whole but not in part pursuant to a Tax Event, a Capital Treatment Event or an Investment Company Event (each as defined in the Fourteenth Supplemental Indenture), in accordance with the terms of Section 2.6 of the Fourteenth Supplemental Indenture.

"Fourteenth Supplemental Indenture" means the Fourteenth Supplemental Indenture to the Base Indenture, dated as of the date hereof, between the Company and the Trustee, as amended or supplemented from time to time.

"Treasury HITS" has the meaning specified in the Declaration.

"Trust" means the Person named as the "Trust" in the first paragraph of this Agreement.

"Trustee" means The Bank of New York Trust Company, N.A., a national banking association, as successor to The Bank of New York, solely in its capacity as trustee pursuant to the Indenture and not in its individual capacity, or its successor in interest in such capacity, or any successor trustee appointed as provided in the Indenture.

"Vice President" means any vice president, whether or not designated by a number or a word or words added before or after the title "Vice President."

Section 1.2 *Form of Documents Delivered to Property Trustee*.

(a) In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents. Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which its certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

(b) Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Agreement, they may, but need not, be consolidated and form one instrument.

Section 1.3 *Notices*.

Any notice or communication is duly given if in writing and delivered in Person or mailed by first-class mail (registered or certified, return receipt requested), telecopier (with receipt confirmed) or overnight air courier guaranteeing next day delivery, to the others' address; *provided* that notice shall be deemed given to the Property Trustee only upon receipt thereof:

If to the Trust or the Property Trustee:

The Bank of New York,
as Property Trustee of
BAC Capital Trust XIV
c/o The Bank of New York Trust Company, N.A.
Towermarc Plaza, 2nd Floor
10161 Centurion Parkway
Jacksonville, FL 32256
Attention: Tina Gonzalez
Facsimile: (904) 645-1921

If to the Company:

Bank of America Corporation
100 North Tryon Street
NC1-007-07-06
Charlotte,
North Carolina 28255
Attention: Corporate Treasury – Securities Administration
Facsimile: (704) 386-0270

If to the Collateral Agent:

The Bank of New York Trust Company, N.A.,
as Collateral Agent
Towermarc Plaza, 2nd Floor
10161 Centurion Parkway
Jacksonville, FL 32256
Attention: Tina Gonzalez
Facsimile: (904) 645-1921

Section 1.4 *Effect of Headings and Table of Contents.*

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

Section 1.5 *Successors and Assigns*.

All covenants and agreements in this Agreement by the Company and the Trust shall bind their respective successors and assigns, whether so expressed or not.

Section 1.6 *Separability Clause*.

In case any provision in this Agreement shall be invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions hereof and thereof shall not in any way be affected or impaired thereby.

Section 1.7 *Benefits of Agreement.*

Nothing contained in this Agreement, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder and, to the extent provided hereby, the holders of Senior Obligations and any Paying Agent, any benefits or any legal or equitable right, remedy or claim under this Agreement.

Section 1.8 *Governing Law; Submission to Jurisdiction.*

This Agreement shall be governed by and construed in accordance with the laws of the State of New York The Company and the Trust hereby submit to the nonexclusive jurisdiction of the United States District Court for the Southern District of New York and the courts of the State of New York (in each case sitting in New York County) for the purposes of all legal proceedings arising out of or relating to this Agreement or the transactions contemplated hereby. The Company and the Trust irrevocably waive, to the fullest extent permitted by applicable law, any objection that they may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

Section 1.9 *Legal Holidays*.

(a) In any case where any Payment Date shall not be a Business Day (notwithstanding any other provision of this Agreement), Contract Payments or other distributions shall not be paid on such date, but Contract Payments or such other distributions

shall be paid on the next succeeding Business Day with the same force and effect as if made on such Payment Date. No interest shall accrue or be payable by the Company or to the Property Trustee (on behalf of the Trust) for the period from and after any such Payment Date on such successive Business Day.

(b) In any case where the Stock Purchase Date shall not be a Business Day (notwithstanding any other provision of this Agreement), the Stock Purchase Contracts shall not be performed and shall not be effected on such date, but the Stock Purchase Contracts shall be performed on the next succeeding Business Day with the same force and effect as if made on such Stock Purchase Date.

Section 1.10 *No Waiver*.

No failure on the part of the Company, the Property Trustee, the Collateral Agent, the Securities Intermediary or any of their respective agents to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by the Company, the Property Trustee, the Collateral Agent, the Securities Intermediary or any of their respective agents of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies herein are cumulative and are not exclusive of any remedies provided by law.

Section 1.11 No *Consent to Assumption*.

Pursuant to the Declaration, the Property Trustee for and on behalf of the Trust hereby expressly withholds any consent to the assumption under Section 365 of the Bankruptcy Code or otherwise, of the Stock Purchase Contract by the Company or its trustee, receiver, liquidator or a Person performing similar functions in the event that the Company becomes the debtor under the Bankruptcy Code or subject to other similar state or Federal law providing for reorganization or liquidation.

Section 1.12 *No Recourse*

It is expressly understood and agreed by the parties hereto that (a) this Agreement is executed and delivered by The Bank of New York, not individually or personally but solely as Property Trustee of the Trust, in the exercise of the powers and authority conferred and vested in it, (b) each of the representations, warranties, covenants, undertakings and agreements herein made on the part of the Trust is made and intended not as personal representations, warranties, covenants, undertakings and agreements by The Bank of New York but is made and intended for the purpose of binding only the Trust, (c) nothing herein contained shall be construed as creating any liability on The Bank of New York, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto and by any Person claiming by, through or under the parties hereto and (d) under no circumstances shall The Bank of New York be personally liable for the payment of any indebtedness or expenses of the Trust or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Trust under this Agreement or any other related documents.

ARTICLE II

THE STOCK PURCHASE CONTRACTS

Section 2.1 *Issuance of Stock Purchase Contracts; Transferability; Assignment; Amendment*

(a) Contemporaneously with the execution and delivery of this Agreement, the Company hereby issues 8,501 Stock Purchase Contracts and may issue up to 4,500 Stock Purchase Contracts in the future having the terms and conditions set forth herein to the Trust (acting through the Property Trustee), which by its execution and delivery of this Agreement is entering into and agreeing to be bound by the Stock Purchase Contracts. No certificates will be issued to evidence the Stock Purchase Contracts.

(b) To the fullest extent permitted by law, other than a transfer in connection with (i) a merger, consolidation, amalgamation or replacement of the Trust or (ii) any conveyance, transfer or lease by the Trust of its properties and assets substantially as an entirety to, and the assumption by, a successor entity pursuant to Section 9.5 of the Declaration, any attempted transfer of the Stock Purchase Contracts shall be void.

(c) To the fullest extent permitted by law, any assignment by the Trust of its rights hereunder, other than an assignment of this Agreement in connection with a merger, consolidation, amalgamation or replacement of the Trust or any conveyance, transfer or lease by the Trust of its properties and assets substantially as an entirety to, and the assumption by, a successor entity pursuant to Section 9.5 of the Declaration, shall be void.

(d) No amendment, modification or waiver of any provision of this Agreement shall be effective against either party hereto unless it is duly authorized by resolution of the Board of Directors of the Company and permitted under Section 6.1 of the Declaration.

Section 2.2 *Purchase of Preferred Stock; Payment of Purchase Price*

(a) Each outstanding Stock Purchase Contract shall obligate the Trust (acting through the Property Trustee) to purchase, and the Company to sell, on the Stock Purchase Date at a price equal to the Stated Amount, one share of Preferred Stock, unless a Termination Event shall have occurred.

(b) If there has been a Successful Remarketing, the Trust will satisfy its obligations under Section 2.2(a) to pay the purchase price in respect of the outstanding Stock Purchase Contracts out of (i) the Proceeds at maturity of the Pledged Treasury Securities and (ii) to the extent of the excess of the purchase price over the amount of the Proceeds at maturity of the Pledged Treasury Securities, the Bank of America Deposit; *provided* that in the event that a receiver has been appointed for the purpose of liquidating or winding up the affairs of The Bank of New York while The Bank of New York is holding the Bank of America Deposit, in lieu of payment of the Bank of America Deposit the Trust shall cause the Collateral Agent to assign its rights in the Bank of America Deposit to the Company on the Stock Purchase Date to the extent of such amount required in full satisfaction of the Trust's obligation to pay the Bank of America Deposit pursuant to this clause (ii).

(c) If there is a Failed Remarketing, the Collateral Agent for the benefit of the Company reserves all of its rights as a secured party with respect to the Notes and, subject to applicable law and Section 2.2(d), may, among other things, (i) retain such Notes or their Proceeds in full satisfaction of the Trust's obligations under the Stock Purchase Contracts or (ii) sell such Notes in one or more public or private sales as permitted by applicable law, in order to satisfy the Trust's obligations under Section 2.2(a) to pay the purchase price in respect of the Stock Purchase Contracts to the extent not satisfied out of the Proceeds at maturity of the Pledged Treasury Securities.

(d) The obligations of the Trust to pay the purchase price in respect of the Stock Purchase Contracts are non-recourse obligations and are payable solely out of the Proceeds of any Collateral pledged to secure the obligations of the Trust assignment of the Bank of America Deposit as set forth in this Section 2.2, and in no event will the Property Trustee be liable for any deficiency between the Proceeds of the disposition of Collateral and the purchase price in respect of the Stock Purchase Contracts.

(e) The Company shall not be obligated to cause the issuance of any share of Preferred Stock in respect of a Stock Purchase Contract or deliver any certificate therefor to the Property Trustee unless the Company shall have received payment for the share of Preferred Stock to be purchased thereunder in the manner herein set forth.

Section 2.3 *Issuance of Preferred Stock.*

(a) Unless a Termination Event shall have occurred, on the Stock Purchase Date upon receipt of the aggregate purchase price payable on all outstanding Stock Purchase Contracts, the Company shall cause to be issued and deposited with the Property Trustee (or its nominee), one or more certificates representing newly issued shares of Preferred Stock registered in the name of the Property Trustee (or its nominee) as custodian for the Trust to which the Trust is entitled hereunder.

Section 2.4 *Termination Event; Notice.*

(a) The Stock Purchase Contracts and all obligations and rights of the Company and the Trust (including the obligations and rights of the Property Trustee acting on behalf of the Trust) thereunder, including, without limitation, the right of the Trust to receive and the obligation of the Company to pay any Contract Payments (including any accrued and unpaid Contract Payments), and the rights and obligations of the Trust to purchase shares of Preferred Stock, shall immediately and automatically terminate, without the necessity of any notice or action by the Trust, the Property Trustee or the Company, if a Termination Event shall have occurred on or prior to the Stock Purchase Date.

(b) Upon the occurrence of a Termination Event, the Company shall promptly but in no event later than five Business Days thereafter give written notice to the Property Trustee and the Collateral Agent of such event.

Section 2.5 *Charges and Taxes*.

The Company will pay all stock transfer and similar taxes attributable to the initial issuance and delivery of the shares of Preferred Stock pursuant to the Stock Purchase Contracts; *provided* that the Company shall not be required to pay any such tax or taxes that may be payable in respect of any issuance of a share of Preferred Stock in a name other than in the name of the Property Trustee or its nominee, as custodian for the Trust, and the Company shall not be required to issue or deliver such share certificates unless or until the Person or Persons requesting the issuance thereof shall have paid to the Company, in addition to any Stated Amount, the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

Section 2.6 *Contract Payments*.

(a) Subject to Section 2.7, the Company shall pay, in arrears on each Payment Date, or if such day is not a Business Day, the next Business Day, the Contract Payments payable in respect of each Stock Purchase Contract to the Property Trustee or upon its order. The Contract Payments will be payable by wire transfer to the account designated by the Property Trustee by a prior written notice to the Company. The Contract Payments will accrue from and including February 16, 2007 or from and including the most recent Payment Date on which Contract Payments have been paid or duly provided for (subject to deferral as set forth in Section 2.7) to but excluding the next succeeding Payment Date. Contract Payments will be calculated on the basis of a 360-day year consisting of twelve 30-day months.

(b) The Company's obligations with respect to Contract Payments, if any, will be subordinated and junior in right of payment to the Company's obligations under any Senior Obligations to the extent and in the manner set forth in Sections 2.6(b) through (l) and will rank *pari passu* with the following obligations: (i) the Notes, (ii) the Company's Remarketable Floating Rate Notes due 2043, (iii) the Company's Guarantee in respect of the HITS, (iv) the Company's Guarantee in respect of the HITS issued by BAC Capital Trust XIII, (v) the Company's Guarantee in respect of the Trust Common Securities issued by the Trust, (vi) the Company's Guarantee in respect of the Trust Common Securities issued by BAC Capital Trust XIII and (vii) the Stock Purchase Contracts issued by the Company in respect of the HITS issued by BAC Capital Trust XIII.

(c) In the event of (i) any insolvency, bankruptcy, receivership, liquidation, reorganization, readjustment, composition or other similar proceeding with respect to the Company, its creditors or its property, (ii) any proceeding for the voluntary or involuntary liquidation, dissolution or other winding up of the Company, whether or not involving insolvency or bankruptcy proceedings, (iii) any assignment by the Company for the benefit of creditors, or (iv) any other marshalling of the assets of the Company:

(A) all Senior Obligations (including any interest thereon accruing after the commencement of any such proceedings) shall first be paid in full before any payment or distribution, whether in cash, securities or other property, shall be made to the Property Trustee in respect of Contract Payments;

(B) any payment or distribution, whether in cash, securities or other property that would otherwise (but for these subordination provisions) be payable or deliverable in

respect of Contract Payments shall be paid or delivered directly to the holders of Senior Obligations in accordance with the priorities then existing among such holders until all Senior Obligations (including any interest thereon accruing after the commencement of any such proceedings) shall have been paid in full;

(C) after payment in full of all sums owing with respect to Senior Obligations, the Property Trustee, together with the holders of any obligations of the Company ranking on a parity with the Contract Payments, shall be entitled to be paid from the remaining assets of the Company the amounts at the time due and owing on account of unpaid Contract Payments and interest thereon and such other obligations before any payment or other distribution, whether in cash, securities or other property, shall be made on account of any capital stock of the Company or any obligations of the Company ranking junior to the Company's obligations to make Contract Payments under the Stock Purchase Contracts and such other obligations; and

(D) in the event that, notwithstanding the foregoing, any payment or distribution of any character or any security, whether in cash, securities or other property, shall be received by the Property Trustee or the Trust in contravention of any of the terms hereof such payment or distribution or security shall be received in trust for the benefit of, and shall be paid over or delivered and transferred to, the holders of the Senior Obligations at the time outstanding in accordance with the priorities then existing among such holders for application to the payment of all Senior Obligations remaining unpaid, to the extent necessary to pay all such Senior Obligations in full. In the event of the failure of the Property Trustee or the Trust to endorse or assign any such payment, distribution or security, each holder of Senior Obligations is hereby irrevocably authorized to endorse or assign the same.

(d) For purposes of Sections 2.6(b) through (l), the words "cash, securities or other property" shall not be deemed to include shares of stock of the Company as reorganized or readjusted, or securities of the Company or any other Person provided for by a plan of reorganization or readjustment, the payment of which is subordinated at least to the extent provided in Sections 2.6(b) through (l) with respect to such Contract Payments on the Stock Purchase Contracts to the payment of all Senior Obligations that may at the time be outstanding; *provided* that (i) the indebtedness or guarantee of indebtedness, as the case may be, that constitutes Senior Obligations is assumed by the Person, if any, resulting from any such reorganization or readjustment, and (ii) the rights of the holders of the Senior Obligations are not, without the consent of each such holder adversely affected thereby, altered by such reorganization or readjustment.

(e) Any failure by the Company to make any payment on or perform any other obligation under Senior Obligations, other than any indebtedness incurred by the Company or assumed or guaranteed, directly or indirectly, by the Company for money borrowed (or any deferral, renewal, extension or refunding thereof) or any indebtedness or obligation as to which the provisions of Sections 2.6(b) through (l) shall have been waived by the Company in the instrument or instruments by which the Company incurred, assumed, guaranteed or otherwise created such indebtedness or obligation, shall not be deemed a default or event of default if (i) the Company shall be disputing its obligation to make such payment or perform such obligation

and (ii) either (A) no final judgment relating to such dispute shall have been issued against the Company that is in full force and effect and is not subject to further review, including a judgment that has become final by reason of the expiration of the time within which a party may seek further appeal or review, or (B) in the event a judgment that is subject to further review or appeal has been issued, the Company shall in good faith be prosecuting an appeal or other proceeding for review and a stay of execution shall have been obtained pending such appeal or review.

(f) Subject to the irrevocable payment in full of all Senior Obligations, the Property Trustee on behalf of the Trust shall be subrogated (equally and ratably with the holders of all obligations of the Company that by their express terms are subordinated to Senior Obligations of the Company to the same extent as payment of the Contract Payments in respect of the Stock Purchase Contracts is subordinated and that are entitled to like rights of subrogation) to the rights of the holders of Senior Obligations to receive payments or distributions of cash, securities or other property of the Company applicable to the Senior Obligations until all such Contract Payments owing on the Stock Purchase Contracts shall be paid in full, and as between the Company, its creditors other than holders of such Senior Obligations and the Property Trustee, no such payment or distribution made to the holders of Senior Obligations by virtue of Sections 2.6(b) through (l) that otherwise would have been made to the Property Trustee shall be deemed to be a payment by the Company on account of such Senior Obligations, it being understood that the provisions of Sections 2.6(b) through (l) are intended solely for the purpose of defining the relative rights of the Property Trustee, on the one hand, and the holders of Senior Obligations, on the other hand.

(g) Nothing contained in Sections 2.6(b) through (l) or elsewhere in this Agreement is intended to or shall impair, as among the Company, its creditors other than the holders of Senior Obligations and the Property Trustee, the obligation of the Company, which is absolute and unconditional, to pay to the Property Trustee such Contract Payments on the Stock Purchase Contracts 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 Property Trustee and creditors of the Company other than the holders of Senior Obligations, nor shall anything herein or therein prevent the Property Trustee from exercising all remedies otherwise permitted by applicable law upon default under this Agreement, subject to the rights, if any, under Sections 2.6(b) through (l), of the holders of Senior Obligations in respect of cash, securities or other property of the Company received upon the exercise of any such remedy.

(h) Upon payment or distribution of assets of the Company referred to in Sections 2.6(b) through (l), the Property Trustee shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which any such dissolution, winding up, liquidation or reorganization proceeding affecting the affairs of the Company is pending or upon a certificate of the trustee in bankruptcy, receiver, conservator, assignee for the benefit of creditors, liquidating trustee or other Person making any payment or distribution, delivered to the Property Trustee, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of the Senior Obligations and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to Sections 2.6(b) through (l).

(i) The Property Trustee 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 (or a trustee or representative on behalf of such holder) to establish that such notice has been given by a holder of Senior Obligations or a trustee or representative on behalf of any such holder or holders. In the event that the Property Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Senior Obligations to participate in any payment or distribution pursuant to Section 2.6(b) through (l), the Property Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Property Trustee as to the amount of 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 Sections 2.6(b) through (l), and, if such evidence is not furnished, the Property Trustee may defer payment to such Person pending judicial determination as to the right of such Person to receive such payment.

(j) Nothing contained in Sections 2.6(b) through (l) shall affect the obligations of the Company to make, or prevent the Company from making, payment of the Contract Payments, except as otherwise provided in Sections 2.6(b) through (l).

(k) The Bank of New York, or any successor Property Trustee, in its individual capacity shall be entitled to all the rights set forth in this Section with respect to any Senior Obligations at the time held by it, to the same extent as any other holder of Senior Obligations and nothing in this Agreement shall deprive The Bank of New York, or any successor Property Trustee of any of its rights as such holder.

(l) No right of any present or future holder of any Senior Obligations to enforce the subordination herein shall at any time or in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any noncompliance by the Company with the terms, provisions and covenants of this Agreement, regardless of any knowledge thereof that any such holder may have or be otherwise charged with.

(m) Nothing in this Section 2.6 shall apply to claims of, or payments to, the Property Trustee under or pursuant to Section 2.7.

(n) With respect to the holders of Senior Obligations, (i) the duties and obligations of the Property Trustee shall be determined solely by the express provisions of this Agreement; (ii) the Property Trustee shall not be liable to any such holders if it shall, acting in good faith, mistakenly pay over or distribute to the Holders or to the Company or any other Person cash, securities or other property to which any holders of Senior Obligations shall be entitled by virtue of this Section 2.6 or otherwise; (iii) no implied covenants or obligations shall be read into this Agreement against the Property Trustee; and (iv) the Property Trustee shall not be deemed to be a fiduciary as to such holders.

(o) Nothing in this Section 2.6 shall apply to any payment or distribution, whether in cash, securities or other property, made to, or paid over or distributed by, any Paying Agent in respect of Contract Payments or otherwise. The Paying Agent shall owe no duty, fiduciary or otherwise, to any holder of Senior Obligations and shall not be liable to any holders of Senior Obligations if it shall pay over or distribute to the Holders or to the Company or any other Person

cash, securities or other property to which any holders of Senior Obligations shall otherwise be entitled by virtue of this Section 2.6 or otherwise; and no implied covenants or obligations shall be read into this Agreement against the Paying Agent.

Section 2.7 *Deferral of Contract Payments*.

(a) The Company shall have the right (which will be exercised if so directed by the Federal Reserve), at any time prior to the Stock Purchase Date, to defer the payment of any or all of the Contract Payments otherwise payable on any Payment Date, but only if the Company shall give the Property Trustee and the Regular Trustees (with a copy to the Paying Agent) written notice of its election to defer each such deferred Contract Payment (specifying the amount to be deferred) at least ten Business Days prior to the earlier of (i) the next succeeding Payment Date or (ii) the date the Property Trustee and the Regular Trustees are required to give notice of any record date or Payment Date with respect to any class of HITS to the New York Stock Exchange or other applicable self regulatory organization or to the Holders, but in any event not less than one Business Day prior to such record date. Any Contract Payments so deferred shall, to the extent permitted by law, accrue interest thereon at a rate of 5.48% per annum, compounding on each succeeding Payment Date, until paid in full (such deferred installments of Contract Payments, if any, together with the interest, if any, accrued thereon, being referred to herein as the "*Deferred Contract Payments*"). Deferred Contract Payments, if any, shall be due on the next succeeding Payment Date except to the extent that payment is deferred pursuant to this Section 2.7, except as provided under Section 1.9. No Contract Payments may be deferred to a date that is after the Stock Purchase Date and no such deferral period may end other than on a Payment Date, except as provided under Section 1.9. If the Stock Purchase Contracts are terminated upon the occurrence of a Termination Event, the Trust's right to receive Contract Payments, if any, and any Deferred Contract Payments, will terminate.

(b) In the event that the Company elects to defer the payment of Contract Payments on the Stock Purchase Contracts until a Payment Date prior to the Stock Purchase Date, then all Deferred Contract Payments, if any, shall be payable to the Property Trustee on behalf of the Trust on such Payment Date, except as provided under Section 1.9.

(c) In the event that the Company elects to defer the payment of Contract Payments on the Stock Purchase Contracts and such deferral is continuing on the Stock Purchase Date, the Property Trustee will receive on the Stock Purchase Date in lieu of a cash payment, in addition to the shares of Preferred Stock to be issued pursuant to Section 2.3, Subordinated Notes that will (i) have a principal amount equal to the aggregate amount of Deferred Contract Payments at the Stock Purchase Date, (ii) mature on the later of March 15, 2015 or five years after commencement of the deferral period, (iii) bear interest at a rate of 5.48% per annum (subject to deferral on the same basis as the Contract Payments), (iv) be subordinate and rank junior in right of payment to all of the Company's Senior Obligations on the same basis as the Contract Payments, and (v) be redeemable at the option of the Company at any time or from time to time prior to their stated maturity at a redemption price equal to the principal amount thereof plus any accrued and unpaid interest to the date of redemption; *provided* that the Company shall register such Subordinated Notes under the Securities Act prior to the delivery thereof to the Property Trustee unless they may be so delivered pursuant to an exemption or exception from registration thereunder.

(d) In the event the Company exercises its option to defer the payment of Contract Payments then, until the earlier of (x) the Termination Date or (y) the date on which the Company shall have either paid all Deferred Contract Payments to the Property Trustee in cash or repaid all amounts outstanding on the Subordinated Notes, the Company shall not (i) 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:

(A) 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;

(B) 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;

(C) 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 the security being converted or exchanged; or

(D) payment by the Company under any guarantee agreement executed for the benefit of the holders of the HITS;

or (ii) 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 Notes; or (iii) make any payment under any guarantee that ranks equally with or junior to the guarantee agreement executed for the benefit of the holders of the HITS.

ARTICLE III

REMEDIES

Section 3.1 Unconditional Right of the Property Trustee to Receive Contract Payments and to Purchase Shares of Preferred Stock; Direct Action by Holders of Preferred HITS or Treasury HITS.

The Property Trustee on behalf of the Trust shall have the right, which is absolute and unconditional, (i) subject to Article II, to receive each Contract Payment with respect to each Stock Purchase Contract on the respective Payment Date and (ii) except upon and following a Termination Event, to purchase one share of Preferred Stock pursuant to such Stock Purchase Contract and, in each such case, to institute suit for the enforcement of any such right to receive Contract Payments and the right to purchase such share of Preferred Stock, and such rights shall not be impaired without its consent. Up to and including the Stock Purchase Date, or the earlier termination of the Stock Purchase Contracts, any Holder shall have the right, upon default in the payment of any Contract Payment with respect to any Stock Purchase Contract on the respective Payment Date (subject to Article II), to institute a suit directly against the Company for enforcement of payment to such Holder of Contract Payments on Stock Purchase Contracts (or interests therein) having a stated amount equal to the aggregate Liquidation Amount (as defined

in the Declaration) of the HITS held by such Holder, but without first directing the Property Trustee to enforce the terms of the Stock Purchase Contracts or suing the Company to enforce the Property Trustee's rights under the Stock Purchase Contracts.

Section 3.2 *Restoration of Rights and Remedies*.

If the Property Trustee has instituted any proceeding to enforce any right or remedy under this Agreement and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Property Trustee, then and in every such case, subject to any determination in such proceeding, the Company and the Property Trustee shall be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Property Trustee shall continue as though no such proceeding had been instituted.

Section 3.3 *Rights and Remedies Cumulative*.

No right or remedy herein conferred upon or reserved to the Property Trustee is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 3.4 *Delay or Omission Not Waiver*.

No delay or omission of the Property Trustee to exercise any right upon a default or remedy upon a default shall impair any such right or remedy or constitute a waiver of any such right. Every right and remedy given by this Article III or by law to the Property Trustee may be exercised from time to time, and as often as may be deemed expedient, by the Property Trustee.

Section 3.5 *Waiver of Stay or Extension Laws.*

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Agreement; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Property Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE IV

CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

Section 4.1 *Covenant Not to Consolidate, Merge, Convey, Transfer or Lease Property Except under Certain Conditions*

The Company covenants that it will not consolidate with, convert into, or merge with and into, any other entity or sell, assign, transfer, lease or convey all or substantially all of its properties and assets to any Person or entity, unless:

(a) the successor shall expressly assume all the obligations of the Company under the Stock Purchase Contracts, this Agreement, the Collateral Agreement, the Declaration, the Indenture (including any supplement thereto), the Guarantee Agreement and the Remarketing Agreement by one or more supplemental agreements in form reasonably satisfactory to the Property Trustee, executed and delivered to the Property Trustee by such corporation;

(b) such successor corporation shall not, immediately after such consolidation, conversion, merger, sale, assignment, transfer, lease or conveyance, be in default of payment obligations under the Stock Purchase Contracts, this Agreement, the Collateral Agreement, the Declaration or the Remarketing Agreement or in material default in the performance of any other covenants under any of the foregoing agreements; and

(c) the successor entity shall have reserved sufficient authorized and unissued shares of preferred stock having substantially the same terms and conditions as the Preferred Stock such that the Trust will receive, on the Stock Purchase Date, shares of preferred stock having substantially the same rights as the Preferred Stock that the Trust would have received had such merger, consolidation or other transaction not occurred.

Section 4.2 *Rights and Duties of Successor Corporation.*

In case of any such merger, consolidation, share exchange, sale, assignment, transfer, lease or conveyance and upon any such assumption by a successor corporation in accordance with Section 4.1, such successor entity shall succeed to and be substituted for the Company with the same effect as if it had been named herein as the Company.

Section 4.3 *Officers' Certificate and Opinion of Counsel Given to Property Trustee.*

The Property Trustee, subject to Section 4.1 and Section 4.2, shall receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any such merger, consolidation, share exchange, sale, assignment, transfer, lease or conveyance, and any such assumption, complies with the provisions of this Article IV and that all conditions precedent to the consummation of any such merger, consolidation, share exchange, sale, assignment, transfer, lease or conveyance have been met.

ARTICLE V

COVENANTS

Section 5.1 *Performance under Stock Purchase Contracts.*

The Company covenants and agrees for the benefit of the Trust that it will duly and punctually perform its obligations under the Stock Purchase Contracts in accordance with the terms of the Stock Purchase Contracts and this Agreement.

Section 5.2 *Company to Reserve Preferred Stock.*

The Company shall at all times prior to the Stock Purchase Date reserve and keep available, free from preemptive rights, out of its authorized but unissued Preferred Stock the full number of shares of Preferred Stock issuable against tender of payment for such shares of Preferred Stock in respect of all Stock Purchase Contracts then outstanding.

Section 5.3 *Covenants as to Preferred Stock.*

The Company covenants that all shares of Preferred Stock that may be issued against tender of payment for such shares of Preferred Stock in respect of any Stock Purchase Contract will, upon issuance, be duly authorized, validly issued, fully paid and nonassessable.

Section 5.4 *Statements of Officers of the Company as to Default.*

The Company will deliver to the Property Trustee, within 120 days after the end of each fiscal year of the Company ending after the date hereof, an Officers' Certificate, stating whether or not to the knowledge of the signers thereof the Company is in default in the performance and observance of any of the terms, provisions and conditions hereof, and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

Section 5.5 *Certain Rights of the Property Trustee.*

The rights, privileges, protections, indemnities and immunities afforded the Property Trustee under the Declaration are hereby incorporated herein as if set forth herein in full.

*** * * ***

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

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

Bank of America Corporation

By: /s/ Ann J. Travis
Name: Ann J. Travis
Title: Senior Vice President

BAC Capital Trust XIV

By: The Bank of New York, not in its individual capacity but solely as Property Trustee

By: /s/ Alexander Pabon
Name: Alexander Pabon
Title: Assistant Vice President

Exhibit 4.12

HITS GUARANTEE AGREEMENT

by and between

BANK OF AMERICA CORPORATION,
as Guarantor

and

THE BANK OF NEW YORK,
as Guarantee Trustee

relating to

BAC CAPITAL TRUST XIII

Dated as of February 16, 2007

BANK OF AMERICA CORPORATION
Certain Sections of this HITS Guarantee Agreement relating to Sections 310 through 318, inclusive, of the Trust Indenture Act of 1939:

Trust Indenture Act Section		Guarantee Section
§ 310	(a)	4.1(a)
	(b)	2.8, 4.1(c)
	(c)	Not applicable
§ 311	(a)	2.2(b)
	(b)	2.2(b)
§ 312	(a)	2.2(a)
	(b)	2.2(b)
§ 313		2.3
§ 314	(a)	2.4
	(b)	Not applicable
	(c)	2.5
	(d)	Not applicable
	(e)	1.1, 2.4
	(f)	2.1, 3.2
§ 315	(a)	3.1(d)
	(b)	2.7
	(c)	3.1(c)
	(d)	3.1(d)
	(e)	Not applicable
§ 316	(a)	1.1, 2.6, 5.4
	(b)	5.3
	(c)	Not applicable
§ 317	(a)	Not applicable
	(b)	Not applicable
§ 318	(a)	2.1
	(b)	2.1

Note: This reconciliation and tie shall not, for any purpose be deemed to be part of the HITS Guarantee Agreement.

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HITS GUARANTEE AGREEMENT, dated as of February 16, 2007, between Bank of America Corporation, a Delaware corporation (the "*Guarantor*"), having its principal office at 100 North Tryon Street, Charlotte, North Carolina 28255, and The Bank of New York, a Delaware banking corporation, as trustee (the "*Guarantee Trustee*"), for the benefit of the Holders from time to time of Floating Rate Preferred Hybrid Income Term Securities of BAC Capital Trust XIII, a Delaware statutory trust (the "*Trust*").

RECITALS OF THE GUARANTOR

The Trust may issue and initially is issuing on the date hereof 700,000 Preferred HITS (as defined herein) having the terms set forth in an Amended and Restated Declaration of Trust, of even date herewith (the "*Declaration*"), among Bank of America Corporation, as sponsor, the Property Trustee, the Delaware Trustee and the Regular Trustees (each as named therein) and the holders from time to time of the Trust Securities.

The Preferred HITS will be issued by the Trust, and the proceeds thereof, together with the proceeds from the issuance of the Trust's Common Securities, will be used to purchase the Notes, which initially will be pledged by the Trust, acting through The Bank of New York, as Property Trustee for the Trust (the "*Property Trustee*"), to The Bank of New York Trust Company, N.A., as collateral agent for the Guarantor, pursuant to the Collateral Agreement, dated as of the date hereof, among the Guarantor, The Bank of New York Trust Company, N.A., as Collateral Agent, Custodial Agent, Securities Intermediary and Securities Registrar, and the Trust.

As an incentive for the Holders to purchase the Preferred HITS, the Guarantor desires irrevocably and unconditionally to agree, to the extent set forth herein, to pay to the Holders of the HITS the Guarantee Payments and to make certain other payments on the terms and conditions set forth herein.

NOW, THEREFORE, THIS HITS GUARANTEE AGREEMENT WITNESSETH: For and in consideration of the purchase of Preferred HITS by each Holder, which purchase the Guarantor hereby acknowledges shall benefit the Guarantor, the Guarantor executes and delivers this HITS Guarantee Agreement for the benefit of the Holders from time to time.

ARTICLE I

Definitions

Section 1.1 *Definitions.*

For all purposes of this HITS Guarantee Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) The terms defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular.

(b) All other terms used herein that are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein.

(c) The words “hereby,” “herein,” “hereof” and “hereunder” and other words of similar import refer to this HITS Guarantee Agreement as a whole and not to any particular Article, Section or other subdivision.

(d) Unless the context otherwise requires, any reference to an “Article”, a “Section” or another subdivision refers to an Article, a Section or another subdivision, as the case may be, of this HITS Guarantee Agreement.

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

“*Authorized Officer*” of any Person means the Chief Executive Officer, President, Chief Financial Officer, any Vice President, Treasurer, Assistant Treasurer, Associate General Counsel or other Person authorized to bind such Person.

“*Base Indenture*” has the meaning specified in the Declaration.

“*Class*” has the meaning specified in the Declaration.

“*Common Security*” has the meaning specified in the Declaration.

“Contract Payments” has the meaning specified in the Stock Purchase Contract Agreement.

“*Corporate HITS*” has the meaning specified in the Declaration.

“*Declaration*” means the Amended and Restated Declaration of the Trust referred to in the recitals to this HITS Guarantee Agreement, as modified, amended or supplemented from time to time.

“*Distributions*” has the meaning specified in the Declaration.

“*Event of Default*” means (i) a default by the Guarantor in any of its payment obligations under this HITS Guarantee Agreement or (ii) a default by the Guarantor in any other obligation hereunder that remains unremedied for 30 days.

“Guarantee Payments” means the following payments or distributions, without duplication, with respect to the HITS of any Class, to the extent not paid or made by or on behalf of the Trust: (i) any accumulated and unpaid Distributions required to be paid on the HITS of such Class, to the extent the Trust shall have funds on hand available therefor at such time; (ii) the Redemption Price with respect to any HITS called for redemption by the Trust (other than in connection with the redemption of Corporate HITS in exchange for Notes), to the extent the Trust shall have funds on hand available therefor at such time; and (iii) upon a voluntary or involuntary dissolution, winding-up or liquidation of the Trust, other than in connection with the distribution of a Like Amount of Corresponding Assets (as defined in the Declaration) to the Holders of Preferred HITS and Trust Common Securities, the lesser of (a) the Liquidation Distribution with respect to each Class of the HITS, to the extent that the Trust shall have funds on hand available therefor at such time and (b) the amount of assets of the Trust has remaining available for distribution to Holders of the HITS on liquidation of the Trust.

"*Guarantee Trustee*" means The Bank of New York, solely in its capacity as Guarantee Trustee and not in its individual capacity, until a Successor Guarantee Trustee has been appointed and has accepted such appointment pursuant to the terms of this HITS Guarantee Agreement, and thereafter means each such Successor Guarantee Trustee.

"*Guarantor*" has the meaning specified in the first paragraph of this HITS Guarantee Agreement.

"*HITS*" means the Preferred HITS, Treasury HITS, and Corporate HITS.

"*HITS Guarantee Agreement*" means this HITS Guarantee Agreement, as modified, amended or supplemented from time to time.

"*Holder*" means any Holder (as defined in the Declaration) of any HITS; provided, however, that in determining whether the holders of the requisite percentage of HITS of any Class or Classes have given any request, notice, consent or waiver hereunder, "Holder" shall not include the Guarantor, the Guarantee Trustee, or any Affiliate of the Guarantor or the Guarantee Trustee.

"*Indenture*" has the meaning specified in the Declaration.

"*Indemnified Person*" has the meaning specified in Section 3.3(c).

"*Liquidation Distribution*" has the meaning specified in the Declaration.

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

"*Majority in Liquidation Amount*" has the meaning specified in the Declaration.

"*Notes*" has the meaning specified in the Declaration.

"*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 HITS Guarantee Agreement shall include:

(i) a statement that each officer signing the Officers' Certificate has read the covenant or condition and the definitions relating thereto;

(ii) a brief statement of the nature and scope of the examination or investigation undertaken by such officer in rendering the Officers' Certificate;

(iii) a statement that 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

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

"*Person*" means any individual, corporation, partnership, joint venture, trust, unincorporated organization or government or any agency or political subdivision thereof.

"*Preferred HITS*" has the meaning specified in the Declaration.

"*Redemption Price*" has the meaning specified in the Declaration.

"*Responsible Officer*" means, with respect to the Guarantee Trustee, any officer within the corporate trust department of the Guarantee Trustee, including any vice president, assistant vice president, assistant secretary, assistant secretary, assistant treasurer, trust officer or any other officer of the Guarantee Trustee who customarily performs 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 such person's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Declaration.

"*Senior Obligations*" has the meaning specified in the Thirteenth Supplemental Indenture.

"*Stock Purchase Contract Agreement"* means the Stock Purchase Contract Agreement, dated as of the date hereof, between the Guarantor and the Trust, acting through The Bank of New York, as Property Trustee.

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

"*Thirteenth Supplemental Indenture*" has the meaning specified in the Declaration.

"*Treasury HITS*" has the meaning specified in the Declaration.

"*Trust*" has the meaning specified in the first paragraph of this HITS Guarantee Agreement.

"*Trust Indenture Act*" means the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa-77bbb), as amended and as in effect on the date of this HITS Guarantee Agreement, except as provided in Section 9.5 of the Indenture.

"*Vice President*" when used with respect to the Guarantor means any duly appointed vice president, whether or not designated by a number or a word or words added before or after the title "vice president."

ARTICLE II

Trust Indenture Act

Section 2.1 *Trust Indenture Act; Application.*

Except as otherwise expressly provided herein, the Trust Indenture Act shall apply as a matter of contract to this HITS Guarantee Agreement for purposes of interpretation, construction and defining the rights and obligations hereunder, and this HITS Guarantee Agreement, the Guarantor and the Guarantee Trustee shall be deemed for all purposes hereof to be subject to and governed by the Trust Indenture Act to the same extent as would be the case if this HITS Guarantee Agreement were qualified under the Trust Indenture Act on the date hereof. Except as otherwise expressly provided herein, if and to the extent that any provision of this HITS Guarantee Agreement 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 *List of Holders.*

(a) The Guarantor shall provide the Guarantee Trustee with a list, in such form as the Guarantee Trustee may reasonably require, of the names and addresses of the Holders (a "*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 Guarantee Trustee; provided that the Guarantor shall not be obligated to provide such List of Holders at any time the List of Holders does not differ from the most recent List of Holders given to the Guarantee Trustee by the Guarantor. The Guarantee Trustee may destroy any List of Holders previously given to it on receipt of a new List of Holders.

(b) The Guarantee Trustee shall comply with the requirements of Section 311(a), Section 311(b) and Section 312(b) of the Trust Indenture Act.

Section 2.3 *Reports by the Guarantee Trustee.*

Within 60 days after March 31 of each year (commencing with the year of the first anniversary of the issuance of the HITS), the Guarantee Trustee shall provide to the Holders such reports as are required by Section 313 of the Trust Indenture Act, if any, in the form and in the manner provided by Section 313 of the Trust Indenture Act. The Guarantee Trustee shall also comply with the requirements of Section 313(d) of the Trust Indenture Act.

Section 2.4 *Periodic Reports to the Guarantee Trustee.*

The Guarantor shall provide to the Guarantee Trustee and the Holders such documents, reports and information, if any, as required by Section 314 of the Trust Indenture Act 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 Guarantee Trustee such evidence of compliance with such conditions precedent, if any, provided for in this HITS Guarantee Agreement that relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given by an officer of the Guarantor 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 at least a Majority in Liquidation Amount of the HITS may, by vote, on behalf of the Holders of all the HITS, waive any past default or Event of Default and its consequences; provided that each Class of HITS shall be entitled, in the case of any default or Event of Default that affects such Class differently from the other Class or Classes, to vote separately as a Class with respect thereto. Upon such waiver, any such default or Event of Default shall cease to exist, and any default or Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this HITS Guarantee Agreement, 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 *Events of Default; Notice.*

(a) The Guarantee Trustee shall, within 90 days after the occurrence of an Event of Default actually known to a Responsible Officer of the Guarantee Trustee, transmit by mail, first class postage prepaid, to the Holders of the HITS, notice of any such Event of Default known to the Guarantee Trustee, unless such Event of Default has been cured before the giving of such notice, provided that, except in the case of a default in the payment of a Guarantee Payment, the Guarantee Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Guarantee Trustee in good faith determines that the withholding of such notice is in the interests of the Holders.

(b) The Guarantee Trustee shall not be deemed to have knowledge of any Event of Default unless the Guarantee Trustee shall have received written notice, or a Responsible Officer charged with the administration of this HITS Guarantee Agreement shall have obtained written notice, of such Event of Default.

Section 2.8 *Conflicting Interests.*

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

ARTICLE III

Powers, Duties and Rights of the Guarantee Trustee

Section 3.1 *Powers and Duties of the Guarantee Trustee.*

(a) This HITS Guarantee Agreement shall be held by the Guarantee Trustee for the benefit of the Holders, and the Guarantee Trustee shall not transfer this HITS Guarantee Agreement to any Person except to a Successor Guarantee Trustee on acceptance by such Successor Guarantee Trustee of its appointment to act as Guarantee Trustee hereunder. The right, title and interest of the Guarantee Trustee, as such, hereunder shall automatically vest in any Successor Guarantee Trustee, upon acceptance by such Successor Guarantee Trustee of its appointment hereunder, 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 Guarantee Trustee.

(b) If an Event of Default has occurred and is continuing, the Guarantee Trustee shall enforce this HITS Guarantee Agreement for the benefit of the Holders.

(c) The 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 HITS Guarantee Agreement (including pursuant to Section 2.1), and no implied covenants shall be read into this HITS Guarantee Agreement against the Guarantee Trustee. If an Event of Default has occurred (that has not been cured or waived pursuant to Section 2.6), the Guarantee Trustee shall exercise such of the rights and powers vested in it by this HITS Guarantee Agreement, 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 HITS Guarantee Agreement shall be construed to relieve the Guarantee Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(i) prior to the occurrence of any 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 Guarantee Trustee shall be determined solely by the express provisions of this HITS Guarantee Agreement (including pursuant to Section 2.1), and the Guarantee Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this HITS Guarantee Agreement (including pursuant to Section 2.1); and

(B) in the absence of bad faith on the part of the Guarantee Trustee, the Guarantee Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Guarantee Trustee and conforming to the requirements of this HITS Guarantee Agreement (but in the case of any such certificates or opinions that by any provision hereof or of the Trust Indenture Act are specifically required to be furnished to the

Guarantee Trustee, the Guarantee Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this HITS Guarantee Agreement);

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

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

(iv) subject to Section 3.1(b), no provision of this HITS Guarantee Agreement shall require the Guarantee Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if the Guarantee Trustee shall have reasonable grounds for believing that the repayment of such funds or liability is not reasonably assured to it under the terms of this HITS Guarantee Agreement or adequate indemnity against such risk or liability is not reasonably assured to it.

Section 3.2 *Certain Rights of the Guarantee Trustee.*

(a) Subject to the provisions of Section 3.1:

(i) The Guarantee Trustee may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document reasonably 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 HITS Guarantee Agreement shall be sufficiently evidenced by an Officers' Certificate unless otherwise prescribed herein.

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

(iv) The Guarantee Trustee may consult with legal counsel, and the advice or opinion of such legal counsel with respect to legal matters shall be full and complete authorization and protection in respect of any action taken, suffered or omitted to be

taken by it hereunder in good faith and in accordance with such advice or opinion. Such legal counsel may be legal counsel to the Guarantor or any of its Affiliates and may be one of its employees. The Guarantee Trustee shall have the right at any time to seek instructions concerning the administration of this HITS Guarantee Agreement from any court of competent jurisdiction.

(v) The Guarantee Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this HITS Guarantee Agreement at the request or direction of any Holder unless such Holder shall have provided to the Guarantee Trustee such adequate security and indemnity satisfactory to it against the costs, expenses (including attorneys' fees and expenses) and liabilities that might be incurred by it in complying with such request or direction, including such reasonable advances as may be requested by the Guarantee Trustee.

(vi) The Guarantee Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Guarantee Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit at the expense of the Guarantor and shall incur no liability of any kind by reason of such inquiry or investigation.

(vii) The Guarantee Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through its agents or attorneys, and the Guarantee 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 hereunder.

(viii) Whenever in the administration of this HITS Guarantee Agreement the Guarantee Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder, the Guarantee Trustee (A) may request instructions from the Holders, (B) may refrain from enforcing such remedy or right or taking such other action until such instructions are received, and (C) shall be protected in acting in accordance with such instructions.

(b) No provision of this HITS Guarantee Agreement shall be deemed to impose any duty or obligation on the Guarantee Trustee to perform any act or acts or exercise any right, power, duty or obligation conferred or imposed on it in any jurisdiction in which it shall be illegal, or in which the Guarantee Trustee shall be unqualified or incompetent in accordance with applicable law, to perform any such act or acts or to exercise any such right, power, duty or obligation. No permissive power or authority available to the Guarantee Trustee shall be construed to be a duty to act in accordance with such power and authority. The 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 HITS Guarantee Agreement. In no event shall the Guarantee Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Guarantee Trustee has been advised of the likelihood of such loss or damage and regardless of the form of

action. The rights, privileges, protections, immunities and benefits given to the Guarantee Trustee, including, without limitation, its rights to be indemnified, are extended to, and shall be enforceable by, the Guarantee Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

Section 3.3 *Compensation; Indemnity; Fees.*

The Guarantor agrees:

(a) to pay to the Guarantee Trustee from time to time such reasonable compensation for all services rendered by it hereunder as may be agreed by the Guarantor and the Guarantee Trustee from time to time (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(b) except as otherwise expressly provided herein, to reimburse the Guarantee Trustee upon request for all reasonable expenses, disbursements and advances incurred or made by the Guarantee Trustee in accordance with any provision of this HITS Guarantee Agreement (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as shall be determined to have been caused by its own negligence or bad faith; and

(c) to indemnify the Guarantee Trustee, any Affiliate of the Guarantee Trustee and any officer, director, shareholder, employee, representative or agent of the Guarantee Trustee (each, an "*Indemnified Person*") for, and to hold each Indemnified Person harmless against, any loss, liability, claim, action, suit, cost, damage or expense of any kind or nature whatsoever incurred without negligence, willful misconduct or bad faith on the part of the Indemnified Person, arising out of or in connection with the acceptance or administration of this HITS Guarantee Agreement, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

The Guarantee Trustee will not claim or exact any lien or charge on any Guarantee Payments as a result of any amount due to it under this HITS Guarantee Agreement.

The provisions of this Section 3.3 shall survive the termination of this HITS Guarantee Agreement or the resignation or removal of the Guarantee Trustee.

ARTICLE IV

Guarantee Trustee

Section 4.1 *The Guarantee Trustee; Eligibility.*

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

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

(ii) be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least $50,000,000, and shall be a

corporation meeting the requirements of Section 310(a) of the Trust Indenture Act. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, then, for the purposes of this Section 4.1(a) and to the extent permitted by the Trust Indenture Act, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

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

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

Section 4.2 *Appointment, Removal and Resignation of the Guarantee Trustee.*

(a) Subject to Section 4.2(c), the Guarantee Trustee may be appointed or removed at any time without cause by the Guarantor except during an Event of Default.

(b) Subject to Section 4.2(c), the Guarantee Trustee may resign from office (without need for prior or subsequent accounting) by giving written notice thereof to the Holders and the Guarantor and by appointing a successor Guarantee Trustee.

(c) The Guarantee Trustee appointed hereunder shall hold office until a Successor Guarantee Trustee shall have been appointed and shall have accepted such appointment. No removal or resignation of a Guarantee Trustee shall be effective until a Successor Guarantee Trustee has been appointed and has accepted such appointment by written instrument executed by such Successor Guarantee Trustee and delivered to the Guarantor and, in the case of any resignation, the resigning Guarantee Trustee.

(d) If no Successor Guarantee Trustee shall have been appointed and accepted appointment as provided in this Section 4.2 within 60 days after delivery to the Holders and the Guarantor of a notice of removal or resignation, the Guarantee Trustee resigning or being removed may petition, at the expense of the Guarantor, any court of competent jurisdiction for appointment of a Successor Guarantee Trustee. Such court may thereupon, after prescribing such notice, if any, as it may deem proper, appoint a Successor Guarantee Trustee.

(e) If a resigning Guarantee Trustee shall fail to appoint a successor, or if a Guarantee Trustee shall be removed or become incapable of acting as Guarantee Trustee and a replacement shall not be appointed prior to such resignation or removal, or if a vacancy shall occur in the office of Guarantee Trustee for any cause, the Holders of the HITS, by the action of the Holders of record of not less than 25% in aggregate Liquidation Amount (as defined in the Declaration) of the HITS then Outstanding (as defined in the Declaration) delivered to such Guarantee Trustee, may appoint a Successor Guarantee Trustee or Trustees. If no successor Guarantee Trustee shall have been so appointed by the Holders of the HITS and accepted appointment, any Holder, on behalf of such Holder and all others similarly situated, or any other Guarantee Trustee, may petition any court of competent jurisdiction for the appointment of a successor Guarantee Trustee.

ARTICLE V

Guarantee

Section 5.1 *Guarantee.*

The Guarantor irrevocably and unconditionally agrees to pay in full to the Holders the Guarantee Payments (without duplication of amounts theretofore paid by or on behalf of the Trust), as and when due, regardless of any defense, right of set-off or counterclaim that the Trust may have or assert, except the defense of payment. The Guarantor's obligation to make a Guarantee Payment may be satisfied by direct payment of the required amounts by the Guarantor to the Holders or by causing the Trust to pay such amounts to the Holders.

Section 5.2 *Waiver of Notice and Demand.*

The Guarantor hereby waives notice of acceptance of this HITS Guarantee Agreement and of any liability to which it applies or may apply, presentment, demand for payment, any right to require a proceeding first against the Guarantee Trustee, the Trust or any other Person before proceeding against the Guarantor, protest, notice of nonpayment, notice of dishonor, notice of redemption and all other notices and demands.

Section 5.3 *Obligations Not Affected.*

The obligations, covenants, agreements and duties of the Guarantor under this HITS Guarantee Agreement 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 Trust of any express or implied agreement, covenant, term or condition relating to the HITS to be performed or observed by the Trust;

(b) the extension of time for the payment by the Trust of any portion of the Distributions, Redemption Price, Liquidation Distribution or any other sums payable under the terms of the HITS or the extension of time for the performance of any other obligation under, arising out of, or in connection with, the HITS (other than an extension of time for payment of Distributions, Redemption Price, Liquidation Distribution or other sums payable that results from the extension of any interest payment period on the Notes as provided in the Indenture or any extension of the maturity date of the Notes as permitted by the Indenture or the deferral of Contract Payments as provided in the Stock Purchase Contract Agreement);

(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 HITS, or any action on the part of the Trust granting indulgence or extension of any kind;

(d) the voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of debt of, or other similar proceedings affecting, the Trust or any of the assets of the Trust;

(e) any invalidity of, or defect or deficiency in, the HITS;

(f) any failure or omission to receive any regulatory approval or consent required in connection with the Common Securities or HITS, including the failure to receive any approval of the Board of Governors of the Federal Reserve System, if required, for the redemption of the HITS;

(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 (other than payment of the underlying obligation), 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 the consent of, the Guarantor with respect to the happening of any of the foregoing.

Section 5.4 *Rights of Holders.*

The Guarantor expressly acknowledges that: (i) this HITS Guarantee Agreement will be deposited with the Guarantee Trustee to be held for the benefit of the Holders; (ii) the Guarantee Trustee has the right to enforce this HITS Guarantee Agreement on behalf of the Holders; (iii) the Holders of a Majority in Liquidation Amount of the HITS of the affected Class or Classes have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Guarantee Trustee in respect of this HITS Guarantee Agreement or exercising any trust or power conferred upon the Guarantee Trustee under this HITS Guarantee Agreement; and (iv) if the Guarantee Trustee fails to enforce the HITS Guarantee Agreement, any Holder may institute a legal proceeding directly against the Guarantor to enforce its rights under this HITS Guarantee Agreement without first instituting a legal proceeding against the Guarantee Trustee, the Trust or any other Person.

Section 5.5 *Guarantee of Payment.*

This HITS Guarantee Agreement creates a guarantee of payment and not of collection. This HITS Guarantee Agreement will not be discharged except by payment of the Guarantee Payments in full (without duplication of amounts theretofore paid by the Trust) or upon the other termination of this HITS Guarantee Agreement as provided in Section 7.1 hereof.

Section 5.6 *Subrogation.*

The Guarantor shall be subrogated to all rights (if any) of the Holders against the Trust in respect of any amounts paid to the Holders by the Guarantor under this HITS Guarantee

Agreement; provided that the Guarantor shall not (except to the extent required by mandatory provisions of law) be entitled to enforce or exercise any rights 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 HITS Guarantee Agreement, if, at the time of any such payment, any amounts are due and unpaid under this HITS Guarantee Agreement. If any amount shall be paid to the Guarantor in violation of the preceding sentence, the Guarantor agrees to hold such amount in trust for the Holders and to pay over such amount to the Holders.

Section 5.7 *Independent Obligations.*

The Guarantor acknowledges that its obligations hereunder are independent of the obligations of the Trust with respect to the HITS and that the Guarantor shall be liable as principal and as debtor hereunder to make Guarantee Payments pursuant to the terms of this HITS Guarantee Agreement notwithstanding the occurrence of any event referred to in subsections (a) through (g), inclusive, of Section 5.3.

ARTICLE VI

Covenants And Subordination

Section 6.1 *Limitation of Transactions.*

So long as any HITS remain outstanding, if (i) the Guarantor shall be in default with respect to its Guarantee Payments or other obligations hereunder; (ii) there shall have occurred any Event of Default or Nonpayment under the Indenture (as defined therein) or during an Extension Period (as defined in the Thirteenth Supplemental Indenture); (iii) the Guarantor shall be in default with respect to the payment of any interest upon any HITS when it becomes due and payable; or (iv) the Guarantor shall be in default with respect to the payment of any principal of (or premium, if any, on) any HITS as and when the same shall become due and payable, then (a) the Guarantor shall not declare or pay any dividend on, or 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 the Guarantor's 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, (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 (iv) payment by the Guarantor under this HITS Guarantee Agreement), (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 and (c) the Guarantor shall not make any payment under any guarantee that ranks equally with or junior to this HITS Guarantee Agreement.

Section 6.2 *Subordination.*

The obligations of the Guarantor under this HITS Guarantee Agreement will constitute unsecured obligations of the Guarantor and will rank subordinate and junior in right of payment and upon liquidation to all Senior Obligations of the Guarantor to the extent and in the manner set forth in the Indenture with respect to the Notes, and the provisions of Article 15 of the Base Indenture will apply, *mutatis mutandis,* to the obligations of the Guarantor hereunder. The obligations of the Guarantor hereunder do not constitute Senior Obligations of the Guarantor.

Section 6.3 *Pari Passu Obligations.*

The obligations of the Guarantor under this HITS Guarantee Agreement shall rank *pari passu* with the obligations of the Guarantor under (i) any similar guarantee agreements issued by the Guarantor on behalf of the holders of preferred or capital securities issued by any statutory trust the assets of which consist of debt securities that are *pari passu* to the Notes and the proceeds thereof, (ii) (a) the Notes, (b) the Guarantor's Remarketable Fixed Rate Junior Subordinated Notes due 2043, (c) the Guarantor's Guarantee in respect of the HITS issued by BAC Capital Trust XIV, (d) the Guarantor's Guarantee in respect of the Trust Common Securities issued by the Trust, (e) the Guarantor's Guarantee in respect of the trust common securities issued by BAC Capital Trust XIV, (f) the Stock Purchase Contracts issued by the Guarantor in respect of the HITS issued by the Trust pursuant to the Stock Purchase Contract Agreement, and (g) the stock purchase contracts issued by the Guarantor in respect of the HITS issued by BAC Capital Trust XIV, (iii) any expense agreements entered into by the Guarantor in connection with the offering of preferred or capital securities by any statutory trust the assets of which consist of debt securities that are *pari passu* to the Notes and the proceeds thereof, and (iv) any other security, guarantee or other agreement or obligation that is expressly stated to rank *pari passu* with the obligations of the Guarantor under this HITS Guarantee Agreement or with any obligation that ranks *pari passu* with the obligations of the Guarantor under this HITS Guarantee Agreement.

ARTICLE VII

Termination

Section 7.1 *Termination.*

This HITS Guarantee Agreement shall terminate and be of no further force and effect upon (i) full payment of the Redemption Price of all HITS or (ii) full payment of the amounts payable in accordance with Article IX of the Declaration upon liquidation or dissolution of the Trust. Notwithstanding the foregoing, this HITS Guarantee Agreement will continue to be effective or will be reinstated, as the case may be, if at any time any Holder is required to repay any sums paid with respect to HITS or this HITS Guarantee Agreement. Section 3.3 shall survive any termination of this HITS Guarantee Agreement.

ARTICLE VIII

Miscellaneous

Section 8.1 *Successors and Assigns.*

All guarantees and agreements contained in this HITS Guarantee Agreement shall bind the successors, assigns, receivers, trustees and representatives of the Guarantor whether so expressed or not and will be for the benefit of the Holders of the HITS then outstanding. Except in connection with a consolidation, merger or sale involving the Guarantor that is permitted under Article 10 of the Indenture and pursuant to which the successor or assignee agrees in writing to perform the Guarantor's obligations hereunder, the Guarantor shall not assign its obligations hereunder, and any purported assignment other than in accordance with this provision shall be void.

Section 8.2 *Amendments.*

Except with respect to any changes that do not adversely affect the rights of the Holders in any material respect (in which case no consent of the Holders will be required), this HITS Guarantee Agreement may only be amended with the prior approval of the Holders of not less than a Majority in Liquidation Amount of the outstanding HITS. The holders of each Class of HITS will also be entitled to vote separately as a class to the extent that any proposed amendment would not affect them in the same or substantially the same manner. The provisions of Article VI of the Declaration concerning meetings of the Holders shall apply to the giving of such approval.

Section 8.3 *Notices.*

Any notice, request or other communication required or permitted to be given hereunder shall be in writing, duly signed by the party giving such notice, and delivered, telecopied or mailed by first class mail as follows:

(a) if given to the Guarantor, to the address or telecopy number set forth below or such other address or facsimile number as the Guarantor may give notice to the Guarantee Trustee and the Holders:

Bank of America Corporation
Bank of America Corporate Center
NC1-007-07-06
100 North Tryon Street
Charlotte, North Carolina 28255
Attention: Corporate Treasury – Securities Administration
Facsimile: (704) 386-0270

With a copy to:

Bank of America Legal Department
NCI-002-29-01
101 South Tryon Street
Charlotte, North Carolina 28255
Attention: General Counsel

(b) if given to the Guarantee Trustee, to the address or telecopy number set forth below or such other address or facsimile number as the Guarantee Trustee may give notice to the Guarantor and Holders:

The Bank of New York
c/o The Bank of New York Trust Company, N.A.
Towermarc Plaza, 2nd Floor
10161 Centurion Parkway
Jacksonville, FL 32256
Attention: Corporate Trust Administration
Facsimile: (904) 645-1921

With a copy to:

BAC Capital Trust XIII
c/o Bank of America Corporation
100 North Tryon Street
NC1-007-07-06
Charlotte, North Carolina 28255
Attention: Corporate Treasury – Securities Administration
Facsimile: (704) 386-0270

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

All notices hereunder 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 8.4 *Expenses.*

The Guarantor agrees to pay, and the Trust will not be obligated to pay, directly or indirectly, all costs, expenses, debts and obligations of the Trust, other than those relating to securities issued by the Trust.

Section 8.5 *Benefit.*

This HITS Guarantee Agreement is solely for the benefit of the Holders and is not separately transferable from the HITS.

Section 8.6 *Governing Law.*

This HITS Guarantee Agreement shall be governed by and construed in accordance with the laws of the State of New York.

* * * *

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

IN WITNESS WHEREOF, the parties hereto have executed this HITS Guarantee Agreement as of the day and year first above written.

Bank of America Corporation,
as Guarantor

By: /s/ Ann J. Travis
Name: Ann J. Travis
Title: Senior Vice President

The Bank of New York,
not in its individual capacity, but solely
as Guarantee Trustee

By: /s/ Alexander Pabon
Name: Alexander Pabon
Title: Assistant Vice President

Exhibit 4.13

HITS GUARANTEE AGREEMENT

by and between

BANK OF AMERICA CORPORATION,
as Guarantor

and

THE BANK OF NEW YORK,
as Guarantee Trustee

relating to

BAC CAPITAL TRUST XIV

Dated as of February 16, 2007

BANK OF AMERICA CORPORATION
Certain Sections of this HITS Guarantee Agreement relating to Sections 310 through 318, inclusive, of the Trust Indenture Act of 1939:

Trust Indenture Act Section		Guarantee Section
§ 310	(a)	4.1(a)
	(b)	2.8, 4.1(c)
	(c)	Not applicable
§ 311	(a)	2.2(b)
	(b)	2.2(b)
§ 312	(a)	2.2(a)
	(b)	2.2(b)
§ 313		2.3
§ 314	(a)	2.4
	(b)	Not applicable
	(c)	2.5
	(d)	Not applicable
	(e)	1.1, 2.4
	(f)	2.1, 3.2
§ 315	(a)	3.1(d)
	(b)	2.7
	(c)	3.1(c)
	(d)	3.1(d)
	(e)	Not applicable
§ 316	(a)	1.1, 2.6, 5.4
	(b)	5.3
	(c)	Not applicable
§ 317	(a)	Not applicable
	(b)	Not applicable
§ 318	(a)	2.1
	(b)	2.1

Note: This reconciliation and tie shall not, for any purpose be deemed to be part of the HITS Guarantee Agreement.

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HITS GUARANTEE AGREEMENT, dated as of February 16, 2007, between Bank of America Corporation, a Delaware corporation (the "*Guarantor*"), having its principal office at 100 North Tryon Street, Charlotte, North Carolina 28255, and The Bank of New York, a Delaware banking corporation, as trustee (the "*Guarantee Trustee*"), for the benefit of the Holders from time to time of 5.63% Fixed to Floating Rate Preferred Hybrid Income Term Securities of BAC Capital Trust XIV, a Delaware statutory trust (the "*Trust*").

RECITALS OF THE GUARANTOR

The Trust may issue and initially is issuing on the date hereof 850,000 Preferred HITS (as defined herein) having the terms set forth in an Amended and Restated Declaration of Trust, of even date herewith (the "*Declaration*"), among Bank of America Corporation, as sponsor, the Property Trustee, the Delaware Trustee and the Regular Trustees (each as named therein) and the holders from time to time of the Trust Securities.

The Preferred HITS will be issued by the Trust, and the proceeds thereof, together with the proceeds from the issuance of the Trust's Common Securities, will be used to purchase the Notes, which initially will be pledged by the Trust, acting through The Bank of New York, as Property Trustee for the Trust (the "*Property Trustee*"), to The Bank of New York Trust Company, N.A., as collateral agent for the Guarantor, pursuant to the Collateral Agreement, dated as of the date hereof, among the Guarantor, The Bank of New York Trust Company, N.A., as Collateral Agent, Custodial Agent, Securities Intermediary and Securities Registrar, and the Trust.

As an incentive for the Holders to purchase the Preferred HITS, the Guarantor desires irrevocably and unconditionally to agree, to the extent set forth herein, to pay to the Holders of the HITS the Guarantee Payments and to make certain other payments on the terms and conditions set forth herein.

NOW, THEREFORE, THIS HITS GUARANTEE AGREEMENT WITNESSETH: For and in consideration of the purchase of Preferred HITS by each Holder, which purchase the Guarantor hereby acknowledges shall benefit the Guarantor, the Guarantor executes and delivers this HITS Guarantee Agreement for the benefit of the Holders from time to time.

ARTICLE I

Definitions

Section 1.1 *Definitions*.

For all purposes of this HITS Guarantee Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) The terms defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular.

(b) All other terms used herein that are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein.

(c) The words "hereby," "herein," "hereof" and "hereunder" and other words of similar import refer to this HITS Guarantee Agreement as a whole and not to any particular Article, Section or other subdivision.

(d) Unless the context otherwise requires, any reference to an "Article", a "Section" or another subdivision refers to an Article, a Section or another subdivision, as the case may be, of this HITS Guarantee Agreement.

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

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

"*Base Indenture*" has the meaning specified in the Declaration.

"*Class*" has the meaning specified in the Declaration.

"*Common Security*" has the meaning specified in the Declaration.

"Contract Payments" has the meaning specified in the Stock Purchase Contract Agreement.

"*Corporate HITS*" has the meaning specified in the Declaration.

"*Declaration*" means the Amended and Restated Declaration of the Trust referred to in the recitals to this HITS Guarantee Agreement, as modified, amended or supplemented from time to time.

"*Distributions*" has the meaning specified in the Declaration.

"*Event of Default*" means (i) a default by the Guarantor in any of its payment obligations under this HITS Guarantee Agreement or (ii) a default by the Guarantor in any other obligation hereunder that remains unremedied for 30 days.

"Guarantee Payments" means the following payments or distributions, without duplication, with respect to the HITS of any Class, to the extent not paid or made by or on behalf of the Trust: (i) any accumulated and unpaid Distributions required to be paid on the HITS of such Class, to the extent the Trust shall have funds on hand available therefor at such time; (ii) the Redemption Price with respect to any HITS called for redemption by the Trust (other than in connection with the redemption of Corporate HITS in exchange for Notes), to the extent the Trust shall have funds on hand available therefor at such time; and (iii) upon a voluntary or involuntary dissolution, winding-up or liquidation of the Trust, other than in connection with the distribution of a Like Amount of Corresponding Assets (as defined in the Declaration) to the Holders of Preferred HITS and Trust Common Securities, the lesser of (a) the Liquidation Distribution with respect to each Class of the HITS, to the extent that the Trust shall have funds

on hand available therefor at such time and (b) the amount of assets of the Trust has remaining available for distribution to Holders of the HITS on liquidation of the Trust.

"*Guarantee Trustee*" means The Bank of New York, solely in its capacity as Guarantee Trustee and not in its individual capacity, until a Successor Guarantee Trustee has been appointed and has accepted such appointment pursuant to the terms of this HITS Guarantee Agreement, and thereafter means each such Successor Guarantee Trustee.

"*Guarantor*" has the meaning specified in the first paragraph of this HITS Guarantee Agreement.

"*HITS*" means the Preferred HITS, Treasury HITS, and Corporate HITS.

"*HITS Guarantee Agreement*" means this HITS Guarantee Agreement, as modified, amended or supplemented from time to time.

"*Holder*" means any Holder (as defined in the Declaration) of any HITS; provided, however, that in determining whether the holders of the requisite percentage of HITS of any Class or Classes have given any request, notice, consent or waiver hereunder, "Holder" shall not include the Guarantor, the Guarantee Trustee, or any Affiliate of the Guarantor or the Guarantee Trustee.

"*Indenture*" has the meaning specified in the Declaration.

"*Indemnified Person*" has the meaning specified in Section 3.3(c).

"*Liquidation Distribution*" has the meaning specified in the Declaration.

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

"*Majority in Liquidation Amount*" has the meaning specified in the Declaration.

"*Notes*" has the meaning specified in the Declaration.

"*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 HITS Guarantee Agreement shall include:

(i) a statement that each officer signing the Officers' Certificate has read the covenant or condition and the definitions relating thereto;

(ii) a brief statement of the nature and scope of the examination or investigation undertaken by such officer in rendering the Officers' Certificate;

(iii) a statement that 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

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

"*Person*" means any individual, corporation, partnership, joint venture, trust, unincorporated organization or government or any agency or political subdivision thereof.

"*Preferred HITS*" has the meaning specified in the Declaration.

"*Redemption Price*" has the meaning specified in the Declaration.

"*Responsible Officer*" means, with respect to the Guarantee Trustee, any officer within the corporate trust department of the Guarantee Trustee, including any vice president, assistant vice president, assistant secretary, assistant secretary, assistant treasurer, trust officer or any other officer of the Guarantee Trustee who customarily performs 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 such person's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Declaration.

"*Senior Obligations*" has the meaning specified in the Fourteenth Supplemental Indenture.

"*Stock Purchase Contract Agreement"* means the Stock Purchase Contract Agreement, dated as of the date hereof, between the Guarantor and the Trust, acting through The Bank of New York, as Property Trustee.

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

"*Fourteenth Supplemental Indenture*" has the meaning specified in the Declaration.

"*Treasury HITS*" has the meaning specified in the Declaration.

"*Trust*" has the meaning specified in the first paragraph of this HITS Guarantee Agreement.

"*Trust Indenture Act*" means the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa-77bbb), as amended and as in effect on the date of this HITS Guarantee Agreement, except as provided in Section 9.5 of the Indenture.

"*Vice President*" when used with respect to the Guarantor means any duly appointed vice president, whether or not designated by a number or a word or words added before or after the title "vice president."

ARTICLE II

Trust Indenture Act

Section 2.1 *Trust Indenture Act; Application.*

Except as otherwise expressly provided herein, the Trust Indenture Act shall apply as a matter of contract to this HITS Guarantee Agreement for purposes of interpretation, construction and defining the rights and obligations hereunder, and this HITS Guarantee Agreement, the Guarantor and the Guarantee Trustee shall be deemed for all purposes hereof to be subject to and governed by the Trust Indenture Act to the same extent as would be the case if this HITS Guarantee Agreement were qualified under the Trust Indenture Act on the date hereof. Except as otherwise expressly provided herein, if and to the extent that any provision of this HITS Guarantee Agreement 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 *List of Holders.*

(a) The Guarantor shall provide the Guarantee Trustee with a list, in such form as the Guarantee Trustee may reasonably require, of the names and addresses of the Holders (a "*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 Guarantee Trustee; provided that the Guarantor shall not be obligated to provide such List of Holders at any time the List of Holders does not differ from the most recent List of Holders given to the Guarantee Trustee by the Guarantor. The Guarantee Trustee may destroy any List of Holders previously given to it on receipt of a new List of Holders.

(b) The Guarantee Trustee shall comply with the requirements of Section 311(a), Section 311(b) and Section 312(b) of the Trust Indenture Act.

Section 2.3 *Reports by the Guarantee Trustee.*

Within 60 days after March 31 of each year (commencing with the year of the first anniversary of the issuance of the HITS), the Guarantee Trustee shall provide to the Holders such reports as are required by Section 313 of the Trust Indenture Act, if any, in the form and in the manner provided by Section 313 of the Trust Indenture Act. The Guarantee Trustee shall also comply with the requirements of Section 313(d) of the Trust Indenture Act.

Section 2.4 *Periodic Reports to the Guarantee Trustee.*

The Guarantor shall provide to the Guarantee Trustee and the Holders such documents, reports and information, if any, as required by Section 314 of the Trust Indenture Act 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 Guarantee Trustee such evidence of compliance with such conditions precedent, if any, provided for in this HITS Guarantee Agreement that relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given by an officer of the Guarantor 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 at least a Majority in Liquidation Amount of the HITS may, by vote, on behalf of the Holders of all the HITS, waive any past default or Event of Default and its consequences; provided that each Class of HITS shall be entitled, in the case of any default or Event of Default that affects such Class differently from the other Class or Classes, to vote separately as a Class with respect thereto. Upon such waiver, any such default or Event of Default shall cease to exist, and any default or Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this HITS Guarantee Agreement, 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 *Events of Default; Notice.*

(a) The Guarantee Trustee shall, within 90 days after the occurrence of an Event of Default actually known to a Responsible Officer of the Guarantee Trustee, transmit by mail, first class postage prepaid, to the Holders of the HITS, notice of any such Event of Default known to the Guarantee Trustee, unless such Event of Default has been cured before the giving of such notice, provided that, except in the case of a default in the payment of a Guarantee Payment, the Guarantee Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Guarantee Trustee in good faith determines that the withholding of such notice is in the interests of the Holders.

(b) The Guarantee Trustee shall not be deemed to have knowledge of any Event of Default unless the Guarantee Trustee shall have received written notice, or a Responsible Officer charged with the administration of this HITS Guarantee Agreement shall have obtained written notice, of such Event of Default.

Section 2.8 *Conflicting Interests.*

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

ARTICLE III

Powers, Duties and Rights of the Guarantee Trustee

Section 3.1 *Powers and Duties of the Guarantee Trustee.*

(a) This HITS Guarantee Agreement shall be held by the Guarantee Trustee for the benefit of the Holders, and the Guarantee Trustee shall not transfer this HITS Guarantee Agreement to any Person except to a Successor Guarantee Trustee on acceptance by such Successor Guarantee Trustee of its appointment to act as Guarantee Trustee hereunder. The right, title and interest of the Guarantee Trustee, as such, hereunder shall automatically vest in any Successor Guarantee Trustee, upon acceptance by such Successor Guarantee Trustee of its appointment hereunder, 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 Guarantee Trustee.

(b) If an Event of Default has occurred and is continuing, the Guarantee Trustee shall enforce this HITS Guarantee Agreement for the benefit of the Holders.

(c) The 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 HITS Guarantee Agreement (including pursuant to Section 2.1), and no implied covenants shall be read into this HITS Guarantee Agreement against the Guarantee Trustee. If an Event of Default has occurred (that has not been cured or waived pursuant to Section 2.6), the Guarantee Trustee shall exercise such of the rights and powers vested in it by this HITS Guarantee Agreement, 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 HITS Guarantee Agreement shall be construed to relieve the Guarantee Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(i) prior to the occurrence of any 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 Guarantee Trustee shall be determined solely by the express provisions of this HITS Guarantee Agreement (including pursuant to Section 2.1), and the Guarantee Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this HITS Guarantee Agreement (including pursuant to Section 2.1); and

(B) in the absence of bad faith on the part of the Guarantee Trustee, the Guarantee Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Guarantee Trustee and conforming to the requirements of this HITS Guarantee Agreement (but in the case of any such certificates or opinions that by any provision hereof or of the Trust Indenture Act are specifically required to be furnished to the

Guarantee Trustee, the Guarantee Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this HITS Guarantee Agreement);

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

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

(iv) subject to Section 3.1(b), no provision of this HITS Guarantee Agreement shall require the Guarantee Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if the Guarantee Trustee shall have reasonable grounds for believing that the repayment of such funds or liability is not reasonably assured to it under the terms of this HITS Guarantee Agreement or adequate indemnity against such risk or liability is not reasonably assured to it.

Section 3.2 *Certain Rights of the Guarantee Trustee.*

(a) Subject to the provisions of Section 3.1:

(i) The Guarantee Trustee may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document reasonably 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 HITS Guarantee Agreement shall be sufficiently evidenced by an Officers' Certificate unless otherwise prescribed herein.

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

(iv) The Guarantee Trustee may consult with legal counsel, and the advice or opinion of such legal counsel with respect to legal matters shall be full and complete authorization and protection in respect of any action taken, suffered or omitted to be

taken by it hereunder in good faith and in accordance with such advice or opinion. Such legal counsel may be legal counsel to the Guarantor or any of its Affiliates and may be one of its employees. The Guarantee Trustee shall have the right at any time to seek instructions concerning the administration of this HITS Guarantee Agreement from any court of competent jurisdiction.

(v) The Guarantee Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this HITS Guarantee Agreement at the request or direction of any Holder unless such Holder shall have provided to the Guarantee Trustee such adequate security and indemnity satisfactory to it against the costs, expenses (including attorneys' fees and expenses) and liabilities that might be incurred by it in complying with such request or direction, including such reasonable advances as may be requested by the Guarantee Trustee.

(vi) The Guarantee Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Guarantee Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit at the expense of the Guarantor and shall incur no liability of any kind by reason of such inquiry or investigation.

(vii) The Guarantee Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through its agents or attorneys, and the Guarantee 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 hereunder.

(viii) Whenever in the administration of this HITS Guarantee Agreement the Guarantee Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder, the Guarantee Trustee (A) may request instructions from the Holders, (B) may refrain from enforcing such remedy or right or taking such other action until such instructions are received, and (C) shall be protected in acting in accordance with such instructions.

(b) No provision of this HITS Guarantee Agreement shall be deemed to impose any duty or obligation on the Guarantee Trustee to perform any act or acts or exercise any right, power, duty or obligation conferred or imposed on it in any jurisdiction in which it shall be illegal, or in which the Guarantee Trustee shall be unqualified or incompetent in accordance with applicable law, to perform any such act or acts or to exercise any such right, power, duty or obligation. No permissive power or authority available to the Guarantee Trustee shall be construed to be a duty to act in accordance with such power and authority. The 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 HITS Guarantee Agreement. In no event shall the Guarantee Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Guarantee Trustee has been advised of the likelihood of such loss or damage and regardless of the form of

action. The rights, privileges, protections, immunities and benefits given to the Guarantee Trustee, including, without limitation, its rights to be indemnified, are extended to, and shall be enforceable by, the Guarantee Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

Section 3.3 *Compensation; Indemnity; Fees.*

The Guarantor agrees:

(a) to pay to the Guarantee Trustee from time to time such reasonable compensation for all services rendered by it hereunder as may be agreed by the Guarantor and the Guarantee Trustee from time to time (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(b) except as otherwise expressly provided herein, to reimburse the Guarantee Trustee upon request for all reasonable expenses, disbursements and advances incurred or made by the Guarantee Trustee in accordance with any provision of this HITS Guarantee Agreement (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as shall be determined to have been caused by its own negligence or bad faith; and

(c) to indemnify the Guarantee Trustee, any Affiliate of the Guarantee Trustee and any officer, director, shareholder, employee, representative or agent of the Guarantee Trustee (each, an "*Indemnified Person*") for, and to hold each Indemnified Person harmless against, any loss, liability, claim, action, suit, cost, damage or expense of any kind or nature whatsoever incurred without negligence, willful misconduct or bad faith on the part of the Indemnified Person, arising out of or in connection with the acceptance or administration of this HITS Guarantee Agreement, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

The Guarantee Trustee will not claim or exact any lien or charge on any Guarantee Payments as a result of any amount due to it under this HITS Guarantee Agreement.

The provisions of this Section 3.3 shall survive the termination of this HITS Guarantee Agreement or the resignation or removal of the Guarantee Trustee.

ARTICLE IV

Guarantee Trustee

Section 4.1 *The Guarantee Trustee; Eligibility.*

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

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

(ii) be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least $50,000,000, and shall be a

corporation meeting the requirements of Section 310(a) of the Trust Indenture Act. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, then, for the purposes of this Section 4.1(a) and to the extent permitted by the Trust Indenture Act, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

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

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

Section 4.2 *Appointment, Removal and Resignation of the Guarantee Trustee.*

(a) Subject to Section 4.2(c), the Guarantee Trustee may be appointed or removed at any time without cause by the Guarantor except during an Event of Default.

(b) Subject to Section 4.2(c), the Guarantee Trustee may resign from office (without need for prior or subsequent accounting) by giving written notice thereof to the Holders and the Guarantor and by appointing a successor Guarantee Trustee.

(c) The Guarantee Trustee appointed hereunder shall hold office until a Successor Guarantee Trustee shall have been appointed and shall have accepted such appointment. No removal or resignation of a Guarantee Trustee shall be effective until a Successor Guarantee Trustee has been appointed and has accepted such appointment by written instrument executed by such Successor Guarantee Trustee and delivered to the Guarantor and, in the case of any resignation, the resigning Guarantee Trustee.

(d) If no Successor Guarantee Trustee shall have been appointed and accepted appointment as provided in this Section 4.2 within 60 days after delivery to the Holders and the Guarantor of a notice of removal or resignation, the Guarantee Trustee resigning or being removed may petition, at the expense of the Guarantor, any court of competent jurisdiction for appointment of a Successor Guarantee Trustee. Such court may thereupon, after prescribing such notice, if any, as it may deem proper, appoint a Successor Guarantee Trustee.

(e) If a resigning Guarantee Trustee shall fail to appoint a successor, or if a Guarantee Trustee shall be removed or become incapable of acting as Guarantee Trustee and a replacement shall not be appointed prior to such resignation or removal, or if a vacancy shall occur in the office of Guarantee Trustee for any cause, the Holders of the HITS, by the action of the Holders of record of not less than 25% in aggregate Liquidation Amount (as defined in the Declaration) of the HITS then Outstanding (as defined in the Declaration) delivered to such Guarantee Trustee, may appoint a Successor Guarantee Trustee or Trustees. If no successor Guarantee Trustee shall have been so appointed by the Holders of the HITS and accepted appointment, any Holder, on behalf of such Holder and all others similarly situated, or any other Guarantee Trustee, may petition any court of competent jurisdiction for the appointment of a successor Guarantee Trustee.

ARTICLE V

Guarantee

Section 5.1 *Guarantee.*

The Guarantor irrevocably and unconditionally agrees to pay in full to the Holders the Guarantee Payments (without duplication of amounts theretofore paid by or on behalf of the Trust), as and when due, regardless of any defense, right of set-off or counterclaim that the Trust may have or assert, except the defense of payment. The Guarantor's obligation to make a Guarantee Payment may be satisfied by direct payment of the required amounts by the Guarantor to the Holders or by causing the Trust to pay such amounts to the Holders.

Section 5.2 *Waiver of Notice and Demand.*

The Guarantor hereby waives notice of acceptance of this HITS Guarantee Agreement and of any liability to which it applies or may apply, presentment, demand for payment, any right to require a proceeding first against the Guarantee Trustee, the Trust or any other Person before proceeding against the Guarantor, protest, notice of nonpayment, notice of dishonor, notice of redemption and all other notices and demands.

Section 5.3 *Obligations Not Affected.*

The obligations, covenants, agreements and duties of the Guarantor under this HITS Guarantee Agreement 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 Trust of any express or implied agreement, covenant, term or condition relating to the HITS to be performed or observed by the Trust;

(b) the extension of time for the payment by the Trust of any portion of the Distributions, Redemption Price, Liquidation Distribution or any other sums payable under the terms of the HITS or the extension of time for the performance of any other obligation under, arising out of, or in connection with, the HITS (other than an extension of time for payment of Distributions, Redemption Price, Liquidation Distribution or other sums payable that results from the extension of any interest payment period on the Notes as provided in the Indenture or any extension of the maturity date of the Notes as permitted by the Indenture or the deferral of Contract Payments as provided in the Stock Purchase Contract Agreement);

(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 HITS, or any action on the part of the Trust granting indulgence or extension of any kind;

(d) the voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of debt of, or other similar proceedings affecting, the Trust or any of the assets of the Trust;

(e) any invalidity of, or defect or deficiency in, the HITS;

(f) any failure or omission to receive any regulatory approval or consent required in connection with the Common Securities or HITS, including the failure to receive any approval of the Board of Governors of the Federal Reserve System, if required, for the redemption of the HITS;

(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 (other than payment of the underlying obligation), 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 the consent of, the Guarantor with respect to the happening of any of the foregoing.

Section 5.4 *Rights of Holders.*

The Guarantor expressly acknowledges that: (i) this HITS Guarantee Agreement will be deposited with the Guarantee Trustee to be held for the benefit of the Holders; (ii) the Guarantee Trustee has the right to enforce this HITS Guarantee Agreement on behalf of the Holders; (iii) the Holders of a Majority in Liquidation Amount of the HITS of the affected Class or Classes have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Guarantee Trustee in respect of this HITS Guarantee Agreement or exercising any trust or power conferred upon the Guarantee Trustee under this HITS Guarantee Agreement; and (iv) if the Guarantee Trustee fails to enforce the HITS Guarantee Agreement, any Holder may institute a legal proceeding directly against the Guarantor to enforce its rights under this HITS Guarantee Agreement without first instituting a legal proceeding against the Guarantee Trustee, the Trust or any other Person.

Section 5.5 *Guarantee of Payment.*

This HITS Guarantee Agreement creates a guarantee of payment and not of collection. This HITS Guarantee Agreement will not be discharged except by payment of the Guarantee Payments in full (without duplication of amounts theretofore paid by the Trust) or upon the other termination of this HITS Guarantee Agreement as provided in Section 7.1 hereof.

Section 5.6 *Subrogation.*

The Guarantor shall be subrogated to all rights (if any) of the Holders against the Trust in respect of any amounts paid to the Holders by the Guarantor under this HITS Guarantee

Agreement; provided that the Guarantor shall not (except to the extent required by mandatory provisions of law) be entitled to enforce or exercise any rights 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 HITS Guarantee Agreement, if, at the time of any such payment, any amounts are due and unpaid under this HITS Guarantee Agreement. If any amount shall be paid to the Guarantor in violation of the preceding sentence, the Guarantor agrees to hold such amount in trust for the Holders and to pay over such amount to the Holders.

Section 5.7 *Independent Obligations.*

The Guarantor acknowledges that its obligations hereunder are independent of the obligations of the Trust with respect to the HITS and that the Guarantor shall be liable as principal and as debtor hereunder to make Guarantee Payments pursuant to the terms of this HITS Guarantee Agreement notwithstanding the occurrence of any event referred to in subsections (a) through (g), inclusive, of Section 5.3.

ARTICLE VI

Covenants and Subordination

Section 6.1 *Limitation of Transactions.*

So long as any HITS remain outstanding, if (i) the Guarantor shall be in default with respect to its Guarantee Payments or other obligations hereunder; (ii) there shall have occurred any Event of Default or Nonpayment under the Indenture (as defined therein) or during an Extension Period (as defined in the Fourteenth Supplemental Indenture); (iii) the Guarantor shall be in default with respect to the payment of any interest upon any HITS when it becomes due and payable; or (iv) the Guarantor shall be in default with respect to the payment of any principal of (or premium, if any, on) any HITS as and when the same shall become due and payable, then (a) the Guarantor shall not declare or pay any dividend on, or 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 the Guarantor's 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, (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 (iv) payment by the Guarantor under this HITS Guarantee Agreement), (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 and (c) the Guarantor shall not make any payment under any guarantee that ranks equally with or junior to this HITS Guarantee Agreement.

Section 6.2 *Subordination.*

The obligations of the Guarantor under this HITS Guarantee Agreement will constitute unsecured obligations of the Guarantor and will rank subordinate and junior in right of payment and upon liquidation to all Senior Obligations of the Guarantor to the extent and in the manner set forth in the Indenture with respect to the Notes, and the provisions of Article 15 of the Base Indenture will apply, *mutatis mutandis,* to the obligations of the Guarantor hereunder. The obligations of the Guarantor hereunder do not constitute Senior Obligations of the Guarantor.

Section 6.3 *Pari Passu Obligations.*

The obligations of the Guarantor under this HITS Guarantee Agreement shall rank *pari passu* with the obligations of the Guarantor under (i) any similar guarantee agreements issued by the Guarantor on behalf of the holders of preferred or capital securities issued by any statutory trust the assets of which consist of debt securities that are *pari passu* to the Notes and the proceeds thereof, (ii) (a) the Notes, (b) the Guarantor's Remarketable Floating Rate Junior Subordinated Notes due 2043, (c) the Guarantor's Guarantee in respect of the HITS issued by BAC Capital Trust XIII, (d) the Guarantor's Guarantee in respect of the Trust Common Securities issued by the Trust, (e) the Guarantor's Guarantee in respect of the trust common securities issued by BAC Capital Trust XIII, (f) the Stock Purchase Contracts issued by the Guarantor in respect of the HITS issued by the Trust pursuant to the Stock Purchase Contract Agreement, and (g) the stock purchase contracts issued by the Guarantor in respect of the HITS issued by BAC Capital Trust XIII, (iii) any expense agreements entered into by the Guarantor in connection with the offering of preferred or capital securities by any statutory trust the assets of which consist of debt securities that are *pari passu* to the Notes and the proceeds thereof, and (iv) any other security, guarantee or other agreement or obligation that is expressly stated to rank *pari passu* with the obligations of the Guarantor under this HITS Guarantee Agreement or with any obligation that ranks *pari passu* with the obligations of the Guarantor under this HITS Guarantee Agreement.

ARTICLE VII

Termination

Section 7.1 *Termination.*

This HITS Guarantee Agreement shall terminate and be of no further force and effect upon (i) full payment of the Redemption Price of all HITS or (ii) full payment of the amounts payable in accordance with Article IX of the Declaration upon liquidation or dissolution of the Trust. Notwithstanding the foregoing, this HITS Guarantee Agreement will continue to be effective or will be reinstated, as the case may be, if at any time any Holder is required to repay any sums paid with respect to HITS or this HITS Guarantee Agreement. Section 3.3 shall survive any termination of this HITS Guarantee Agreement.

ARTICLE VIII

Miscellaneous

Section 8.1 *Successors and Assigns.*

All guarantees and agreements contained in this HITS Guarantee Agreement shall bind the successors, assigns, receivers, trustees and representatives of the Guarantor whether so expressed or not and will be for the benefit of the Holders of the HITS then outstanding. Except in connection with a consolidation, merger or sale involving the Guarantor that is permitted under Article 10 of the Indenture and pursuant to which the successor or assignee agrees in writing to perform the Guarantor's obligations hereunder, the Guarantor shall not assign its obligations hereunder, and any purported assignment other than in accordance with this provision shall be void.

Section 8.2 *Amendments.*

Except with respect to any changes that do not adversely affect the rights of the Holders in any material respect (in which case no consent of the Holders will be required), this HITS Guarantee Agreement may only be amended with the prior approval of the Holders of not less than a Majority in Liquidation Amount of the outstanding HITS. The holders of each Class of HITS will also be entitled to vote separately as a class to the extent that any proposed amendment would not affect them in the same or substantially the same manner. The provisions of Article VI of the Declaration concerning meetings of the Holders shall apply to the giving of such approval.

Section 8.3 *Notices.*

Any notice, request or other communication required or permitted to be given hereunder shall be in writing, duly signed by the party giving such notice, and delivered, telecopied or mailed by first class mail as follows:

(a) if given to the Guarantor, to the address or telecopy number set forth below or such other address or facsimile number as the Guarantor may give notice to the Guarantee Trustee and the Holders:

Bank of America Corporation
Bank of America Corporate Center
NC1-007-07-06
100 North Tryon Street
Charlotte, North Carolina 28255
Attention: Corporate Treasury – Securities Administration
Facsimile: (704) 386-0270

With a copy to:

Bank of America Legal Department
NCI-002-29-01
101 South Tryon Street
Charlotte, North Carolina 28255
Attention: General Counsel

(b) if given to the Guarantee Trustee, to the address or telecopy number set forth below or such other address or facsimile number as the Guarantee Trustee may give notice to the Guarantor and Holders:

The Bank of New York
c/o The Bank of New York Trust Company, N.A.
Towermarc Plaza, 2nd Floor
10161 Centurion Parkway
Jacksonville, FL 32256
Attention: Corporate Trust Administration
Facsimile: (904) 645-1921

With a copy to:

BAC Capital Trust XIV
c/o Bank of America Corporation
100 North Tryon Street
NC1-007-07-06
Charlotte, North Carolina 28255
Attention: Corporate Treasury – Securities Administration
Facsimile: (704) 386-0270

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

All notices hereunder 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 8.4 *Expenses.*

The Guarantor agrees to pay, and the Trust will not be obligated to pay, directly or indirectly, all costs, expenses, debts and obligations of the Trust, other than those relating to securities issued by the Trust.

Section 8.5 *Benefit.*

This HITS Guarantee Agreement is solely for the benefit of the Holders and is not separately transferable from the HITS.

Section 8.6 *Governing Law.*

This HITS Guarantee Agreement shall be governed by and construed in accordance with the laws of the State of New York.

* * * *

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

IN WITNESS WHEREOF, the parties hereto have executed this HITS Guarantee Agreement as of the day and year first above written.

Bank of America Corporation,
as Guarantor

By: /s/ Ann J. Travis
Name: Ann J. Travis
Title: Senior Vice President

The Bank of New York,
not in its individual capacity, but solely as Guarantee Trustee

By: /s/ Alexander Pabon
Name: Alexander Pabon
Title: Assistant Vice President

Exhibit 5.1

Richard W. Viola
704.343.2149
Fax 704.444.8779
rick.viola@hmw.com

201 North Tryon Street
Charlotte, NC 28202
P.O. Box 31247 (28231)
704.343.2000
f 704.343.2300

February 16, 2007

Bank of America Corporation
Bank of America Corporate Center
100 North Tryon Street
Charlotte, North Carolina 28255-0065

Re: $2,000,000,000 Bank of America Corporation Floating Rate Callable Senior Notes, due February 2010

Ladies and Gentlemen:

We have acted as counsel to Bank of America Corporation, a Delaware corporation (the "Corporation"), in connection with (i) the issuance and sale of $2,000,000,000 in aggregate principal amount of its Floating Rate Callable Senior Notes, due February 2010 (the "Notes"), and (ii) the Registration Statement on Form S-3, Registration No. 333-133852 (the "Registration Statement"), filed with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"), with respect to the Corporation's unsecured debt securities, units, warrants, preferred stock, depositary shares and common stock, and the Prospectus dated May 5, 2006 constituting a part thereof, as supplemented by the Global Prospectus Supplement dated February 8, 2007, filed with the Commission pursuant to Rule 424(b) under the Securities Act, relating to the Notes.

As such counsel, we have examined and are familiar with such original or photocopies or certified copies of such records of the Corporation and its subsidiaries, certificates of officers of the Corporation and of public officials and such other documents as we have deemed relevant or necessary as the basis for the opinion set forth below. In such examinations, we have assumed the legal capacity of natural persons, the genuineness of all signatures on, and the authenticity of, all documents submitted to us as originals and the conformity to original documents of all documents submitted to us as certified copies or photocopies and the authenticity of the originals of such copies. We have also relied upon statements of fact contained in documents that we have examined in connection with our representation of the Corporation.

Based solely upon the foregoing, and in reliance thereon, and subject to the limitations, qualifications and exceptions set forth below, we are of the opinion that the Notes, when (i) executed, issued and delivered by the Corporation to The Bank of New York Trust Company, N.A. for authentication in accordance with the Senior Indenture dated as of January 1, 1995, as amended and

supplemented from time to time (the "Indenture") between the Corporation and The Bank of New York Trust Company, N.A., as successor trustee under the terms of the Indenture, (ii) authenticated and delivered by The Bank of New York Trust Company, N.A., as issuing and paying agent, in accordance with the Indenture, and (iii) paid for, all as contemplated in the Board Resolution or Company Order (as each is defined in the Indenture), will have been validly authorized and issued under the Indenture and will constitute valid and legally binding obligations of the Corporation, subject 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 performance 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.

We hereby consent to be named in the Registration Statement as attorneys who passed upon the legality of the Notes and to the filing of a copy of this opinion as part of the Corporation's Current Report on Form 8-K to be filed for the purpose of including this opinion as part of the Registration Statement.

Very truly yours,

/s/ HELMS MULLISS & WICKER, PLLC

Exhibit 5.2

[LETTERHEAD OF HELMS MULLISS & WICKER, PLLC]

February 16, 2007

Bank of America Corporation

Bank of America Corporate Center

100 North Tryon Street

Charlotte, North Carolina 28255

Re: Bank of America Corporation and BAC Capital Trust XIII Floating Rate Preferred HITS

Ladies and Gentlemen:

We have acted as counsel to Bank of America Corporation, a Delaware corporation (the "Corporation"), and BAC Capital Trust XIII, a Delaware statutory trust (the "Trust"), in connection with (a) the Registration Statement on Form S-3 (File No. 333-133852, 333-133852-01, 333-133852-02, 333-133852-03, 333-133852-04, 333-133852-05, 333-133852-06, 333-133852-07 and 333-133852-08) (the "Registration Statement"), filed with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"), and (b) the Prospectus dated May 5, 2006 and the Final Prospectus Supplement dated February 12, 2007 (as so supplemented and amended, the "Prospectus"), each filed with the Commission pursuant to Rule 424(b) under the Securities Act, relating to the issuance by the Trust and purchase by the Underwriters (as defined herein) of 700,000 BAC Capital Trust XIII Floating Rate Preferred HITS (liquidation amount $1,000 per security) (the "Preferred HITS"). The proceeds from the sale of the Preferred HITS and Common Securities of the Trust are to be used by the Trust to purchase up to $700,100,000 aggregate principal amount of Remarketable Floating Rate Junior Subordinated Notes due 2043 (the "Notes") of the Corporation to be issued under the terms of the Indenture and the Thirteenth Supplemental Indenture (each as defined herein). We also have acted as counsel to the Corporation and the Trust in connection with the preparation of the Underwriting Agreement dated February 12, 2007 (the "Underwriting Agreement") among the Corporation, the Trust, and the underwriters named in Schedule A thereto (the "Underwriters"). On the date hereof, the Trust is entering into (i) a Stock Purchase Contract Agreement (the "Stock Purchase Contract Agreement") with the Corporation, pursuant to which the Trust will be obligated to purchase from the Corporation, and the Corporation will be obligated to sell to the Trust, subject to the terms thereof, the Corporation's Floating Rate Non-Cumulative Preferred Stock Series F, no par value and $100,000 liquidation preference per share (the "Preferred Stock"). The terms used herein that are defined in the Prospectus have the respective meanings set forth therein, unless otherwise defined herein.

As such counsel, we have examined and are familiar with such originals or photocopies or certified copies of such records of the Corporation and its subsidiaries, along with certificates

of officers of the Corporation and its subsidiaries, of Regular Trustees of the Trust and of public officials, Forms T-1 supplied by the Debt Trustee and such other documents as we have deemed relevant or necessary as the basis for the opinions set forth below.

In such examinations, we have assumed the legal capacity of natural persons, the genuineness of all signatures on, and the authenticity of, all documents submitted to us as originals and the conformity to original documents of all documents submitted to us as photocopies thereof and the authenticity of the originals of such copies. In addition, with your permission, we have expressly assumed (i) the due authorization, execution and delivery of the Amended and Restated Declaration of Trust dated as of February 16, 2007 between the Corporation, as Sponsor, The Bank of New York, as Property Trustee, The Bank of New York (Delaware), as Delaware Trustee, and the Regular Trustees named therein (the "Declaration"); the Restated Indenture dated as of November 1, 2001 (the "Base Indenture") between the Corporation and The Bank of New York Trust Company, N.A., as successor trustee to The Bank of New York (the "Trustee"); the Thirteenth Supplemental Indenture dated as of February 16, 2007 (the "Thirteenth Supplemental Indenture," and collectively with the Base Indenture, the "Indenture") between the Corporation and the Trustee; the HITS Guarantee dated as of February 16, 2007 between the Corporation and The Bank of New York, as Guarantee Trustee (the "HITS Guarantee"); the Collateral Agreement dated as of February 16, 2007 (the "Collateral Agreement") between the Corporation and The Bank of New York Trust Company, N.A., as Collateral Agent; and the Underwriting Agreement by all parties other than the Corporation, the Regular Trustees or the Trust, and (ii) the accuracy of the representations and warranties of the parties contained in the Declaration, the Indenture, the Fourteenth Supplemental Indenture, the HITS Guarantee, the Collateral Agreement and the Underwriting Agreement.

Based solely upon the foregoing, and in reliance thereon, and subject to the limitations, qualifications and exceptions set forth below, we are of the opinion that:

1. When (i) executed, issued and delivered by the Corporation to the Trustee for authentication in accordance with the Indenture, (ii) authenticated and delivered by the Trustee, in accordance with the Indenture, and (iii) paid for, all as contemplated in the Board Resolution or Company Order (as each is defined in the Indenture), the Notes will have been validly authorized and issued under the Indenture and will constitute valid and legally binding obligations of the Corporation, subject 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 performance 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 (the "Permitted Exceptions").

2. The HITS Guarantee has been duly authorized, executed and delivered by the Corporation and constitutes a legal, valid and binding obligation of the Corporation, enforceable against the Corporation in accordance with its terms, subject to the Permitted Exceptions.

3. The Preferred Stock has been duly authorized and, when duly issued as contemplated by the Prospectus, will be validly issued, fully paid and nonassessable.

We hereby consent to be named in the Registration Statement as attorneys who passed upon the legality of the Notes and to the filing of a copy of this opinion as part of the Corporation's Current Report on Form 8-K to be filed for the purpose of including this opinion as part of the Registration Statement.

. Very truly yours,

/s/ HELMS MULLISS & WICKER, PLLC

Exhibit 5.3

[LETTERHEAD OF HELMS MULLISS & WICKER, PLLC]

February 16, 2007

Bank of America Corporation
Bank of America Corporate Center
100 North Tryon Street
Charlotte, North Carolina 28255

Re: Bank of America Corporation and BAC Capital Trust XIV 5.63% Fixed to Floating Rate Preferred HITS

Ladies and Gentlemen:

We have acted as counsel to Bank of America Corporation, a Delaware corporation (the "Corporation"), and BAC Capital Trust XIV, a Delaware statutory trust (the "Trust"), in connection with (a) the Registration Statement on Form S-3 (File No. 333-133852, 333-133852-01, 333-133852-02, 333-133852-03, 333-133852-04, 333-133852-05, 333-133852-06, 333-133852-07 and 333-133852-08) (the "Registration Statement"), filed with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"), and (b) the Prospectus dated May 5, 2006 and the Final Prospectus Supplement dated February 12, 2007 (as so supplemented and amended, the "Prospectus"), each filed with the Commission pursuant to Rule 424(b) under the Securities Act, relating to the issuance by the Trust and purchase by the Underwriters (as defined herein) of 850,000 BAC Capital Trust XIV 5.63% Fixed to Floating Rate Preferred HITS (liquidation amount $1,000 per security) (the "Preferred HITS"). The proceeds from the sale of the Preferred HITS and Common Securities of the Trust are to be used by the Trust to purchase up to $850,100,000 aggregate principal amount of Remarketable Fixed Rate Junior Subordinated Notes due 2043 (the "Notes") of the Corporation to be issued under the terms of the Indenture and the Fourteenth Supplemental Indenture (each as defined herein). We also have acted as counsel to the Corporation and the Trust in connection with the preparation of the Underwriting Agreement dated February 12, 2007 (the "Underwriting Agreement") among the Corporation, the Trust, and the underwriters named in Schedule A thereto (the "Underwriters"). On the date hereof, the Trust is entering into (i) a Stock Purchase Contract Agreement (the "Stock Purchase Contract Agreement") with the Corporation, pursuant to which the Trust will be obligated to purchase from the Corporation, and the Corporation will be obligated to sell to the Trust, subject to the terms thereof, the Corporation's Adjustable Rate Non-Cumulative Preferred Stock Series G, no par value and $100,000 liquidation preference per share (the "Preferred Stock"). The terms used herein that are defined in the Prospectus have the respective meanings set forth therein, unless otherwise defined herein.

As such counsel, we have examined and are familiar with such originals or photocopies or certified copies of such records of the Corporation and its subsidiaries, along with certificates of officers of the Corporation and its subsidiaries, of Regular Trustees of the Trust and of public officials, Forms T-1 supplied by the Debt Trustee and such other documents as we have deemed relevant or necessary as the basis for the opinions set forth below.

In such examinations, we have assumed the legal capacity of natural persons, the genuineness of all signatures on, and the authenticity of, all documents submitted to us as originals and the conformity to original documents of all documents submitted to us as photocopies thereof and the authenticity of the originals of such copies. In addition, with your permission, we have expressly assumed (i) the due authorization, execution and delivery of the Amended and Restated Declaration of Trust dated as of February 16, 2007 between the Corporation, as Sponsor, The Bank of New York, as Property Trustee, The Bank of New York (Delaware), as Delaware Trustee, and the Regular Trustees named therein (the "Declaration"); the Restated Indenture dated as of November 1, 2001 (the "Base Indenture") between the Corporation and The Bank of New York Trust Company, N.A., as successor trustee to The Bank of New York (the "Trustee"); the Fourteenth Supplemental Indenture dated as of February 16, 2007 (the "Fourteenth Supplemental Indenture," and collectively with the Base Indenture, the "Indenture") between the Corporation and the Trustee; the HITS Guarantee dated as of February 16, 2007 between the Corporation and The Bank of New York, as Guarantee Trustee (the "HITS Guarantee"); the Collateral Agreement dated as of February 16, 2007 (the "Collateral Agreement") between the Corporation and The Bank of New York Trust Company, N.A., as Collateral Agent; and the Underwriting Agreement by all parties other than the Corporation, the Regular Trustees or the Trust, and (ii) the accuracy of the representations and warranties of the parties contained in the Declaration, the Indenture, the Fourteenth Supplemental Indenture, the HITS Guarantee, the Collateral Agreement and the Underwriting Agreement.

Based solely upon the foregoing, and in reliance thereon, and subject to the limitations, qualifications and exceptions set forth below, we are of the opinion that:

1. When (i) executed, issued and delivered by the Corporation to the Trustee for authentication in accordance with the Indenture, (ii) authenticated and delivered by the Trustee, in accordance with the Indenture, and (iii) paid for, all as contemplated in the Board Resolution or Company Order (as each is defined in the Indenture), the Notes will have been validly authorized and issued under the Indenture and will constitute valid and legally binding obligations of the Corporation, subject 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 performance 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 (the "Permitted Exceptions").

2. The HITS Guarantee has been duly authorized, executed and delivered by the Corporation and constitutes a legal, valid and binding obligation of the Corporation, enforceable against the Corporation in accordance with its terms, subject to the Permitted Exceptions.

3. The Preferred Stock has been duly authorized and, when duly issued as contemplated by the Prospectus, will be validly issued, fully paid and nonassessable.

We hereby consent to be named in the Registration Statement as attorneys who passed upon the legality of the Notes and to the filing of a copy of this opinion as part of the Corporation's Current Report on Form 8-K to be filed for the purpose of including this opinion as part of the Registration Statement.

. Very truly yours,

/s/ HELMS MULLISS & WICKER, PLLC

Exhibit 8.1

February 16, 2007

Bank of America Corporation
100 North Tryon Street
NC1-007-07-06
Charlotte, NC 28255

Re: BAC Capital Trust XIII — 700,000 Floating Rate Preferred HITS

Ladies and Gentlemen:

We have acted as special tax counsel to each of Bank of America Corporation (the "Corporation"), a Delaware corporation, and BAC Capital Trust XIII, a statutory trust organized under the Delaware Statutory Trust Act (the "Trust"), in connection with the issuance of Floating Rate Preferred Hybrid Income Term Securities (the "Preferred HITS") by the Trust, as described in that certain Prospectus Supplement, dated February 12, 2007 (the "Prospectus Supplement"), to the Prospectus, dated May 5, 2006 (the "Prospectus"), which was filed with the Securities and Exchange Commission by the Corporation and the Trust. The Trust is authorized to issue three classes of Hybrid Income Term Securities (the "HITS"): the Preferred HITS, the Treasury HITS and the Corporate HITS (the "HITS"). The Corporation will issue remarketable floating rate junior subordinated notes ("Remarketable Floating Rate Junior Subordinated Notes") which will be purchased by the Trust, in an aggregate principal amount equal to the aggregate liquidation amount of the Preferred HITS and the Common Securities issued by the Trust. All capitalized terms used herein and not otherwise defined shall have the respective meanings assigned to them in the Underwriting Agreement, dated February 12, 2007, by and among the Corporation, the Trust and Banc of America Securities LLC, as the representative of the several underwriters named therein.

In furnishing this opinion, we have examined copies of the Registration Statement, the Prospectus Supplement, the Amended and Restated Certificate of Incorporation, organizational documents and Amended and Restated Bylaws of the Corporation, the Declaration of the Trust, as amended to date, and the minutes of the meeting of the Board of Directors of the Corporation authorizing the issuance of the Remarketable Floating Rate Junior Subordinated Notes, and relied upon the accuracy of the facts, representations, and other matters and the fulfillment of the covenants and obligations set forth therein. We also have examined such other documents, papers, statutes and authorities as we deemed necessary to form a basis for the opinions hereinafter expressed. In our examination of such

material, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as original documents and the conformity to original documents of all documents supplied to us as copies. As to various questions of fact material to such opinion, we have relied upon statements and certificates of officers and representatives of the Corporation and others.

To the extent that the obligations of the Corporation as obligor under the Indenture may be dependent upon such matters, we have assumed for purposes of this opinion (i) that the Debt Trustee is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and is duly qualified to engage in the activities contemplated by the Indenture, (ii) that the Indenture has been duly authorized, executed and delivered by and constitutes the legal, valid and binding obligation of the Debt Trustee, enforceable in accordance with its terms, (iii) that the Debt Trustee is in compliance, generally and with respect to acting as a Debt Trustee under the Indenture, with all applicable laws and regulations, and (iv) that the Debt Trustee has the requisite organizational and legal power and authority to perform its obligations under the Indenture.

Based upon and subject to the foregoing, it is our opinion that the statements made in the Prospectus Supplement, under the caption “Certain U.S. Federal Income Tax Consequences,” to the extent such statements summarize material federal tax consequences of the purchase, beneficial ownership and disposition of the HITS to the holders thereof described therein, are correct in all material respects.

The opinion expressed above is based on existing provisions of the Internal Revenue Code of 1986, as amended (the “Code”), existing Treasury Regulations thereunder, published interpretations of the Code and such Regulations by the Internal Revenue Service, and existing court decisions, any of which could be changed at any time. Any such changes may or may not be retroactively applied. It is possible that contrary positions may be taken by the Internal Revenue Service and that a court may agree with such contrary positions. In addition, the opinion rendered herein is based on the facts as of the date of this letter, and we disclaim any undertaking to advise you as to any change in fact or law occurring after the delivery of this letter that could affect the opinion rendered herein. Any variation or difference in any fact from those relied on or assumed herein may affect the conclusions stated herein.

We hereby consent to the filing of this letter as an exhibit to the Registration Statement without admitting that we are “experts” within the meaning of the Securities Act or the rules and regulations of the Securities and Exchange Commission issued thereunder with respect to any part of the Registration Statement, including this exhibit.

February 16, 2007

This opinion is furnished by us to you and is solely for your benefit. Neither this letter nor any opinion expressed herein may be relied upon by any other person or entity without our prior written consent.

Very truly yours,

/s/ Morrison & Foerster LLP

Morrison & Foerster LLP

Exhibit 8.2

February 16, 2007

Bank of America Corporation
100 North Tryon Street
NC1-007-07-06
Charlotte, NC 28255

Re: BAC Capital Trust XIV — 850,000 Fixed to Floating Rate Preferred HITS

Ladies and Gentlemen:

We have acted as special tax counsel to each of Bank of America Corporation (the "Corporation"), a Delaware corporation, and BAC Capital Trust XIV, a statutory trust organized under the Delaware Statutory Trust Act (the "Trust"), in connection with the issuance of Fixed to Floating Rate Preferred Hybrid Income Term Securities (the "Preferred HITS") by the Trust, as described in that certain Prospectus Supplement, dated February 12, 2007 (the "Prospectus Supplement"), to the Prospectus, dated May 5, 2006 (the "Prospectus"), which was filed with the Securities and Exchange Commission by the Corporation and the Trust. The Trust is authorized to issue three classes of Hybrid Income Term Securities (the "HITS"): the Preferred HITS, the Treasury HITS and the Corporate HITS (the "HITS"). The Corporation will issue remarketable fixed rate junior subordinated notes ("Remarketable Fixed Rate Junior Subordinated Notes") which will be purchased by the Trust, in an aggregate principal amount equal to the aggregate liquidation amount of the Preferred HITS and the Common Securities issued by the Trust. All capitalized terms used herein and not otherwise defined shall have the respective meanings assigned to them in the Underwriting Agreement, dated February 12, 2007, by and among the Corporation, the Trust and Banc of America Securities LLC, as the representative of the several underwriters named therein.

In furnishing this opinion, we have examined copies of the Registration Statement, the Prospectus Supplement, the Amended and Restated Certificate of Incorporation, organizational documents and Amended and Restated Bylaws of the Corporation, the Declaration of the Trust, as amended to date, and the minutes of the meeting of the Board of Directors of the Corporation authorizing the issuance of the Remarketable Floating Rate Junior Subordinated Notes, and relied upon the accuracy of the facts, representations, and other matters and the fulfillment of the covenants and obligations set forth therein. We also have examined such other documents, papers, statutes and authorities as we deemed

necessary to form a basis for the opinions hereinafter expressed. In our examination of such material, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as original documents and the conformity to original documents of all documents supplied to us as copies. As to various questions of fact material to such opinion, we have relied upon statements and certificates of officers and representatives of the Corporation and others.

To the extent that the obligations of the Corporation as obligor under the Indenture may be dependent upon such matters, we have assumed for purposes of this opinion (i) that the Debt Trustee is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and is duly qualified to engage in the activities contemplated by the Indenture, (ii) that the Indenture has been duly authorized, executed and delivered by and constitutes the legal, valid and binding obligation of the Debt Trustee, enforceable in accordance with its terms, (iii) that the Debt Trustee is in compliance, generally and with respect to acting as a Debt Trustee under the Indenture, with all applicable laws and regulations, and (iv) that the Debt Trustee has the requisite organizational and legal power and authority to perform its obligations under the Indenture.

Based upon and subject to the foregoing, it is our opinion that the statements made in the Prospectus Supplement, under the caption “Certain U.S. Federal Income Tax Consequences,” to the extent such statements summarize material federal tax consequences of the purchase, beneficial ownership and disposition of the HITS to the holders thereof described therein, are correct in all material respects.

The opinion expressed above is based on existing provisions of the Internal Revenue Code of 1986, as amended (the “Code”), existing Treasury Regulations thereunder, published interpretations of the Code and such Regulations by the Internal Revenue Service, and existing court decisions, any of which could be changed at any time. Any such changes may or may not be retroactively applied. It is possible that contrary positions may be taken by the Internal Revenue Service and that a court may agree with such contrary positions. In addition, the opinion rendered herein is based on the facts as of the date of this letter, and we disclaim any undertaking to advise you as to any change in fact or law occurring after the delivery of this letter that could affect the opinion rendered herein. Any variation or difference in any fact from those relied on or assumed herein may affect the conclusions stated herein.

We hereby consent to the filing of this letter as an exhibit to the Registration Statement without admitting that we are “experts” within the meaning of the Securities Act or the rules and regulations of the Securities and Exchange Commission issued thereunder with respect to any part of the Registration Statement, including this exhibit.

February 16, 2007

This opinion is furnished by us to you and is solely for your benefit. Neither this letter nor any opinion expressed herein may be relied upon by any other person or entity without our prior written consent.

Very truly yours,

/s/ Morrison & Foerster LLP

Morrison & Foerster LLP

Exhibit 10.1

COLLATERAL AGREEMENT

among

BANK OF AMERICA CORPORATION,

THE BANK OF NEW YORK TRUST COMPANY, N.A.,

as Collateral Agent, Custodial Agent,

Securities Intermediary and Securities Registrar,

and

BAC CAPITAL TRUST XIII,

acting through The Bank of New York,

as Property Trustee

February 16, 2007

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EXHIBITS

Exhibit A – Form of Preferred HITS Certificate

Exhibit B – Form of Treasury HITS Certificate

Exhibit C – Form of Corporate HITS Certificate

SCHEDULES

Schedule I – Reference Dealers

Schedule II – Contact Persons for Confirmation

COLLATERAL AGREEMENT, dated as of February 16, 2007, among **BANK OF AMERICA CORPORATION**, a Delaware corporation (the "***Corporation***"), **THE BANK OF NEW YORK TRUST COMPANY, N.A.** ("***The Bank of New York Trust Company***"), as collateral agent (in such capacity, the "***Collateral Agent***"), as Custodial Agent (in such capacity, the "***Custodial Agent***"), as securities intermediary (as defined in Section 8-102(a)(14) of the UCC) with respect to the Collateral Account (as defined herein) (in such capacity, the "***Securities Intermediary***"), and as securities registrar with respect to the HITS (in such capacity, the "***Securities Registrar***"), and **BAC CAPITAL TRUST XIII**, a Delaware statutory trust (the "***Trust***"), acting through **THE BANK OF NEW YORK**, not in its individual capacity but solely as Property Trustee on behalf of the Trust (in such capacity, the "***Property Trustee***").

RECITALS

The Corporation and the Trust (acting through the Property Trustee) are parties to the Stock Purchase Contract Agreement, dated as of the date hereof (as modified and supplemented and in effect from time to time, the "***Stock Purchase Contract Agreement***"), pursuant to which the Corporation has agreed to issue stock purchase contracts, having a stated amount of $100,000 per contract (each, a "***Stock Purchase Contract***") to the Trust.

Each Stock Purchase Contract requires the Corporation to issue and sell, and the Property Trustee (on behalf of the Trust) to purchase, on the Stock Purchase Date (as defined in the Stock Purchase Contract Agreement), for an amount equal to $100,000 (the "***Purchase Price***"), one share of the Corporation's Floating Rate Non-Cumulative Preferred Stock, Series F, $100,000 liquidation preference per share (the "***Preferred Stock***").

Pursuant to the Declaration, the Stock Purchase Contract Agreement and the Stock Purchase Contracts, the Trust acting through the Property Trustee is required to execute and deliver this Agreement, to grant the pledge provided herein of the Collateral to secure the Obligations (as defined herein) and to appoint the Custodial Agent to establish and maintain the Custody Account (as defined herein).

NOW, THEREFORE, THIS COLLATERAL AGREEMENT WITNESSETH: For and in consideration of the agreements and obligations set forth herein and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Corporation, the Collateral Agent, the Custodial Agent, the Securities Intermediary, the Securities Registrar and the Trust mutually agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 *Definitions*.

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular, and nouns and pronouns of the masculine gender include the feminine and neuter genders.

(b) The words "*herein*", "*hereof*" and "*hereunder*" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision and references to any Article, Section or other subdivision are references to an Article, Section or other subdivision of this Agreement.

(c) The following terms that are defined in the UCC shall have the meanings set forth therein: "*certificated security*", "*control*", "*financial asset*", "*financing statement*", "*entitlement order*", "*securities account*", "*security entitlement*" and "*funds-transfer system*".

(d) Capitalized terms used herein and not defined herein have the meanings assigned to them in the Declaration.

(e) The following terms have the meanings given to them in this Section 1.01(e):

"***Additional Distribution Date***" has the meaning specified in the Declaration.

"***Address for Notices***" has the meaning specified in Section 12.03.

"***Agreement***" means this Collateral Agreement, as the same may be amended, modified or supplemented from time to time.

"***Bank of America Deposit***" has the meaning specified in the Stock Purchase Contract Agreement.

"***Book-Entry HITS***" has the meaning specified in the Declaration.

"***Book-Entry HITS Certificates***" has the meaning specified in the Declaration.

"***Cash***" means any coin or currency of the United States as at the time shall be legal tender for payment of public and private debts.

"***Collateral***" means the collective reference to:

(1) the Collateral Account and all investment property and other financial assets from time to time credited to the Collateral Account and all security entitlements with respect thereto, including, without limitation, (A) the Notes, other than any Notes that are Transferred to (x) the Custodial Agent in accordance with Section 6.02 upon the Exchange of Preferred HITS and Qualifying Treasury Securities for Treasury HITS and Corporate HITS pursuant to Sections 5.13(a)(i), (b) and (c) of the Declaration from time to time or (y) the Remarketing Agent or the Custody Account in accordance with Section 8.02(b) upon a Successful Remarketing and (B) any Qualifying Treasury Securities and security entitlements thereto delivered from time to time upon the exchange of Preferred HITS and Qualifying Treasury Securities for Treasury HITS and Corporate HITS pursuant to Sections 5.13(a)(i), (b) and (c) of the Declaration and in accordance with Section 6.02;

(2) all Qualifying Treasury Securities and security entitlements thereto purchased by the Collateral Agent with the Proceeds of Qualifying Treasury Securities pursuant to Section 6.05;

(3) the Bank of America Deposit;

(4) all Proceeds of any of the foregoing (whether such Proceeds arise before or after the commencement of any proceeding under any applicable bankruptcy, insolvency or other similar law, by or against the Trust, as pledgor or with respect to the pledgor); and

(5) all powers and rights now owned or hereafter acquired under or with respect to the Collateral.

"***Collateral Account***" means the securities account of The Bank of New York Trust Company, as Collateral Agent, maintained by the Securities Intermediary and designated "The Bank of New York Trust Company, as Collateral Agent of Bank of America Corporation, as pledgee of BAC Capital Trust XIII, acting through The Bank of New York, as Property Trustee".

"***Collateral Agent***" means the Person named as the "Collateral Agent" in the first paragraph of this Agreement until a successor Collateral Agent shall have become such pursuant to the applicable provisions of this Agreement, and thereafter "Collateral Agent" shall mean such Person or any subsequent successor who is appointed pursuant to this Agreement.

"***Corporation***" means the Person named as the "Corporation" in the first paragraph of this Agreement until a successor shall have become such pursuant to the applicable provisions of the Stock Purchase Contract Agreement, and thereafter "Corporation" shall mean such successor.

"***Custodial Agent***" means the Person named as the "Custodial Agent" in the first paragraph of this Agreement until a successor Custodial Agent shall have become such pursuant to the applicable provisions of this Agreement, and thereafter "Custodial Agent" shall mean such Person or any subsequent successor who is appointed pursuant to this Agreement.

"***Custody Account***" means the securities account of The Bank of New York Trust Company, as Custodial Agent, designated "The Bank of New York Trust Company as Custodial Agent for BAC Capital Trust XIII".

"***Custody Notes***" has the meaning specified in Section 4.01.

"***Declaration***" means the Amended and Restated Declaration of Trust, dated as of the date hereof, among the Corporation, as Sponsor, the Property Trustee, the Delaware Trustee and the Regular Trustees (each as named therein), and the several Holders (as defined therein).

"***Definitive HITS Certificates***" has the meaning specified in the Declaration.

"***Exchange***" means an exchange of Preferred HITS and Qualifying Treasury Securities for Treasury HITS and Corporate HITS pursuant to Section 5.13(b) of the Declaration and Section 6.02 or an exchange of Treasury HITS and Corporate HITS for Preferred HITS and Qualifying Treasury Securities pursuant to Section 5.13(d) of the Declaration and Section 6.03.

"***Exchange Period***" has the meaning specified in the Declaration.

"***Final Dealer***" has the meaning specified in Section 6.05(a).

"***HITS***" has the meaning specified in the Declaration.

"***Indemnitees***" has the meaning specified in Section 10.08(b).

"***Like Amount***" has the meaning specified in the Declaration.

"***Loss***" (and collectively, "***Losses***") has the meaning specified in Section 10.08(b).

"***Market Disruption Event***" has the meaning specified in the Supplemental Indenture.

"***Notes***" means the Remarketable Floating Rate Junior Subordinated Notes due 2043 of the Corporation issued pursuant to the Supplemental Indenture.

"***Notice of Contingent Disposition Election***" means a Notice of Contingent Disposition Election substantially in the form set forth on the reverse side of the form of Corporate HITS Certificate, a copy of which is attached hereto as Exhibit C.

"***Notice of Contingent Exchange Election***" means a Notice of Contingent Exchange Election substantially in the form set forth on the reverse side of the form of Preferred HITS Certificate, a copy of which is attached hereto as Exhibit A.

"***Obligations***" means all obligations and liabilities of the Trust and the Property Trustee on behalf of the Trust under each Stock Purchase Contract, the Stock Purchase Contract Agreement and this Agreement or any other document made, delivered or given in connection herewith or therewith, in each case whether on account of principal, interest (including, without limitation, interest accruing before and after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Property Trustee or the Trust, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), fees, indemnities, costs, expenses or otherwise (including, without limitation, all fees and disbursements of counsel to the Corporation or the Collateral Agent or the Securities Intermediary that are required to be paid by the Trust pursuant to the terms of any of the foregoing agreements).

"***Payment Account***" has the meaning specified in the Declaration.

"***Permitted Investments***" means any one of the following, in each case maturing on the Business Day following the date such investment is made:

(1) any evidence of indebtedness with an original maturity of 365 days or less issued, or directly and fully guaranteed or insured, by the United States of America or any agency or instrumentality thereof (provided that the full faith and credit of the United States of America is pledged in support of the timely payment thereof or such indebtedness constitutes a general obligation of it);

(2) deposits, certificates of deposit or acceptances with an original maturity of 365 days or less of any institution which is a member of the Federal Reserve System having combined capital and surplus and undivided profits of not less than $500 million at the time of deposit (and which may include the Collateral Agent);

(3) investments with an original maturity of 365 days or less of any Person that are fully and unconditionally guaranteed by a bank referred to in clause (2);

(4) repurchase agreements and reverse repurchase agreements relating to marketable direct obligations issued or unconditionally guaranteed by the United States of America or issued by any agency thereof and backed as to timely payment by the full faith and credit of the United States of America;

(5) investments in commercial paper, other than commercial paper issued by the Corporation or its Affiliates, of any corporation incorporated under the laws of the United States of America or any State thereof, which commercial paper has a rating at the time of purchase at least equal to "A-1" by Standard & Poor's Ratings Services ("***S&P***") or at least equal to "P-1" by Moody's Investors Service, Inc. ("***Moody's***"); and

(6) investments in money market funds (including, but not limited to, money market funds managed by the Collateral Agent or an Affiliate of the Collateral Agent) registered under the Investment Company Act of 1940, as amended, rated in the highest applicable rating category by S&P or Moody's.

"***Pledge***" means the lien and security interest created by this Agreement.

"***Pledged Notes***" means each Note deposited with the Collateral Agent pursuant to Section 6.01 or delivered to the Collateral Agent pursuant to Section 6.03, until such time as it is released from the Pledge and delivered to the Custodial Agent pursuant to Section 6.02 or to the Remarketing Agent or the Custody Account pursuant to Section 8.02(b).

"***Pledged Treasury Securities***" means Qualifying Treasury Securities from time to time credited to the Collateral Account pursuant to Section 6.02 and not then released from the Pledge pursuant to Section 6.03, together with all Qualifying Treasury Securities purchased from time to time by the Collateral Agent with the Proceeds of maturing Pledged Treasury Securities pursuant to Section 6.05.

"***Preferred Stock***" has the meaning specified in the Recitals of this Agreement.

"***Proceeds***" has the meaning ascribed thereto in Section 9-102(a)(64) of the UCC and includes, without limitation, all interest, dividends, Cash, instruments, securities, financial assets and other property received, receivable or otherwise distributed upon the sale (including, without limitation, the Remarketing), exchange, collection or disposition of any financial assets from time to time held in the Collateral Account.

"***Property Trustee***" means the Person named as the "Property Trustee" in the first paragraph of this Agreement until a successor Property Trustee shall have become such pursuant to the applicable provisions of the Declaration, and thereafter "Property Trustee" shall mean such Person or any subsequent successor who is appointed pursuant to the Declaration.

"***Purchase Price***" has the meaning specified in the Recitals of this Agreement.

"***Qualifying Treasury Securities***" has the meaning specified in the Declaration.

"***Recombination Notice and Request***" means a Recombination Notice and Request substantially in the form set forth on the reverse side of the forms of Treasury HITS Certificate and Corporate HITS Certificate, copies of which are attached hereto as Exhibits B and C respectively.

"***Reference Dealer***" means each of the U.S. government securities dealers listed on Schedule I hereto (including any successor thereto) and any other U.S. government securities dealers designated by the Collateral Agent (it being understood that the Collateral Agent may, but shall not be obligated, to designate any one or more such other U.S. government securities dealers); provided that if at any time fewer than three of the entities named on Schedule I are active U.S. government securities dealers and approved counterparties of The Bank of New York Trust Company, any of the Regular Trustees may designate an additional U.S. government securities dealer as a Reference Dealer.

"***Regular Trustee***" has the meaning specified in the Declaration.

"***Remarketing***" has the meaning specified in the Supplemental Indenture.

"***Roll Date***" means, with respect to any Additional Distribution Date, the latest date prior to such Additional Distribution Date that is a maturity date of Qualifying Treasury Securities held in the Collateral Account.

"***Securities Intermediary***" means the Person named as the "Securities Intermediary" in the first paragraph of this Agreement until a successor Securities

Intermediary shall have become such pursuant to the applicable provisions of this Agreement, and thereafter "Securities Intermediary" shall mean such Person or any subsequent successor who is appointed pursuant to this Agreement.

"***Securities Registrar***" means the Person named as the "Securities Registrar" in the first paragraph of this Agreement until a successor Securities Registrar shall have been appointed by the Corporation pursuant to the applicable provisions of the Declaration, and thereafter "Securities Registrar" shall mean such Person or any subsequent successor who is appointed pursuant to the Declaration by the Corporation.

"***Stock Purchase Contract***" has the meaning specified in the Recitals of this Agreement.

"***Stock Purchase Contract Agreement***" has the meaning specified in the Recitals of this Agreement.

"***Splitting Notice and Request***" means a Splitting Notice and Request substantially in the form set forth on the reverse side of the form of Preferred HITS Certificate, a copy of which is attached hereto as Exhibit A.

"***Successful***" has the meaning specified in the Supplemental Indenture.

"***Supplemental Indenture***" means the Thirteenth Supplemental Indenture to the Base Indenture (as defined in the Declaration), dated as of February 16, 2007, between Bank of America Corporation and The Bank of New York Trust Company, N.A.

"***Termination Event***" has the meaning specified in the Stock Purchase Contract Agreement.

"***The Bank of New York Trust Company***" has the meaning specified in the first paragraph of this Agreement.

"***Trade Date***" means, with respect to each Roll Date, the Business Day immediately preceding such Roll Date.

"***Trades***" means the Treasury/Reserve Automated Debt Entry System maintained by the Federal Reserve Bank of New York pursuant to the Trades Regulations.

"***Trades Regulations***" means the regulations of the United States Department of the Treasury, published at 31 C.F.R. Part 357, as amended from time to time. Unless otherwise defined herein, all terms defined in the Trades Regulations are used herein as therein defined.

"***Transfer***" means (i) in the case of certificated securities in registered form, delivery as provided in Section 8-301(a) of the UCC, endorsed to the transferee or in blank by an effective endorsement, (ii) in the case of Qualifying Treasury Securities, registration of the transferee as the owner of such Qualifying Treasury Securities on Trades and (iii) in the case of security entitlements, including, without limitation, security

entitlements with respect to Qualifying Treasury Securities, a securities intermediary indicating by book entry that such security entitlement has been credited to the transferee's securities account.

"***Trust***" has the meaning specified in the first paragraph of this Agreement.

"***Trust Preferred Securities***" has the meaning specified in the Declaration

"***UCC***" means the Uniform Commercial Code as in effect in the State of New York from time to time.

"***Value***" means, with respect to any item of Collateral on any date, as to (1) Cash, the face amount thereof, (2) Notes, the aggregate principal amount thereof and (3) Qualifying Treasury Securities, the aggregate principal amount thereof.

ARTICLE II

PLEDGE

Section 2.01 *Pledge*.

Pursuant to Section 2.6 of the Declaration, the Trust (acting through the Property Trustee) hereby pledges and grants to the Collateral Agent, as agent of and for the benefit of the Corporation, a continuing first priority security interest in and to, and a lien upon and right of set-off against, all of such Person's right, title and interest in and to the Collateral to secure the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the Obligations. The Collateral Agent shall have all of the rights, remedies and recourses with respect to the Collateral afforded a secured party by the UCC, in addition to, and not in limitation of, the other rights, remedies and recourses afforded to the Collateral Agent by this Agreement.

Section 2.02 *Control.*

The Collateral Agent shall have control of the Collateral Account pursuant to the provisions of Article III.

Section 2.03 *Termination*.

This Agreement and the Pledge created hereby shall terminate upon the satisfaction of the Obligations. Upon receipt by the Collateral Agent from the Corporation of notice of such termination, the Collateral Agent shall, except as otherwise provided herein, Transfer and instruct the Securities Intermediary to Transfer the Collateral to or upon the order of the Property Trustee, free and clear of the Pledge created hereby.

ARTICLE III

CONTROL

Section 3.01 *Establishment of Collateral Account.*

The Securities Intermediary hereby confirms that:

(a) the Securities Intermediary has established the Collateral Account;

(b) the Collateral Account is a securities account;

(c) subject to the terms of this Agreement, the Securities Intermediary shall identify in its records the Collateral Agent as the entitlement holder entitled to exercise the rights that comprise any financial asset credited to the Collateral Account;

(d) all property delivered to the Securities Intermediary pursuant to this Agreement or the Stock Purchase Contract Agreement, including any Permitted Investments purchased by the Securities Intermediary from the Proceeds of any Collateral, will be credited promptly to the Collateral Account; and

(e) all securities or other property underlying any financial assets credited to the Collateral Account shall be (i) registered in the name of the Property Trustee and indorsed to the Securities Intermediary or in blank, (ii) registered in the name of the Securities Intermediary or the Collateral Agent or (iii) credited to another securities account maintained in the name of the Securities Intermediary. In no case will any financial asset credited to the Collateral Account be registered in the name of the Property Trustee or specially indorsed to the Property Trustee unless such financial asset has been further indorsed to the Securities Intermediary or in blank.

Section 3.02 *Treatment as Financial Assets.*

Each item of property (whether investment property, financial asset, security, instrument or Cash) credited to the Collateral Account shall be treated as a financial asset.

Section 3.03 *Sole Control by Collateral Agent*

Except as provided in Section 8.01, at all times prior to the termination of the Pledge, the Collateral Agent shall have sole control of the Collateral Account, and the Securities Intermediary shall take instructions and directions with respect to the Collateral Account solely from the Collateral Agent. If at any time the Securities Intermediary shall receive an entitlement order issued by the Collateral Agent and relating to the Collateral Account, the Securities Intermediary shall comply with such entitlement order without further consent by the Property Trustee or any other Person. Except as otherwise permitted under this Agreement, until termination of the Pledge, the Securities Intermediary will not comply with any entitlement orders issued by the Property Trustee.

The Trust hereby irrevocably constitutes and appoints the Collateral Agent and the Corporation, with full power of substitution, as the Trust's attorney-in-fact to take on behalf of, and in the name, place and stead of the Trust and the Holders, any action necessary or desirable to perfect and to keep perfected the security interest in the Collateral referred to in Section 2.01. The grant of such power-of-attorney shall not be deemed to require of the Collateral Agent any specific duties or obligations not otherwise expressly assumed by the Collateral Agent

hereunder. Notwithstanding the foregoing, in no event shall the Collateral Agent or Securities Intermediary be responsible for the preparation or filing of any financing or continuation statements or responsible for maintenance or perfection of any security interest hereunder.

Section 3.04 *Securities Intermediary's Location.*

The Collateral Account, and the rights and obligations of the Securities Intermediary, the Collateral Agent and the Property Trustee with respect thereto, shall be governed by the laws of the State of New York. Regardless of any provision in any other agreement, for purposes of the UCC, New York shall be deemed to be the Securities Intermediary's jurisdiction.

Section 3.05 *No Other Claims.*

Except for the claims and interest of the Collateral Agent and of the Trust in the Collateral Account, the Securities Intermediary (without having conducted any investigation) does not know of any claim to, or interest in, the Collateral Account or in any financial asset credited thereto. If any Person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against the Collateral Account or in any financial asset carried therein, the Securities Intermediary will promptly notify the Collateral Agent and the Property Trustee.

Section 3.06 *Investment and Release.*

All Proceeds of financial assets from time to time deposited in the Collateral Account shall be invested and reinvested as provided in this Agreement. At no time prior to termination of the Pledge with respect to any particular property shall such property be released from the Collateral Account except in accordance with this Agreement or upon written instructions of the Collateral Agent.

Section 3.07 *No Other Agreements.*

The Securities Intermediary has not entered into, and prior to the termination of the Pledge will not enter into, any agreement with any other Person relating to the Collateral Account or any financial assets credited thereto, including, without limitation, any agreement to comply with entitlement orders of any Person other than the Collateral Agent.

Section 3.08 *Powers Coupled with an Interest.*

The rights and powers granted in this Article III to the Collateral Agent have been granted in order to perfect its security interests in the Collateral Account, are powers coupled with an interest and will be affected neither by the bankruptcy of the Property Trustee or the Trust nor by the lapse of time. The obligations of the Securities Intermediary under this Article III shall continue in effect until the termination of the Pledge with respect to any and all Collateral.

Section 3.09 *Waiver of Lien; Waiver of Set-off.*

The Securities Intermediary waives any security interest, lien or right to make deductions or set-offs that it may now have or hereafter acquire in or with respect to the Collateral Account, any financial asset credited thereto or any security entitlement in respect thereof. Neither the financial assets credited to the Collateral Account nor the security entitlements in respect thereof will be subject to deduction, set-off, banker's lien or any other right in favor of any person other than the Corporation.

ARTICLE IV

CUSTODY

Section 4.01 *Appointment.*

The Trust hereby appoints the Custodial Agent as Custodial Agent of the Trust to hold all of the Notes that are property of the Trust, other than the Pledged Notes (collectively, the "***Custody Notes***"), for the benefit of the Trust and for the purposes set forth herein, and the Custodial Agent hereby accepts such appointment under the terms and conditions set forth herein.

Section 4.02 *Custody*.

The Custodial Agent will hold the Custody Notes in the Custody Account. For the avoidance of doubt, the Custodial Agent shall segregate on its books and records the assets of the Trust from assets held by the Custodial Agent for other customers (including the Collateral) or for the Custodial Agent itself. The Custodial Agent shall only have the obligations expressly set forth herein and shall have no responsibility for monitoring compliance with the Declaration, the Stock Purchase Agreement or any other agreement in connection therewith. The Custodial Agent shall accept the Transfer of Notes from the Collateral Agent from time to time pursuant to Section 6.02, deliver Notes to the Collateral Agent from time to time pursuant to Section 6.03 and deliver Notes to the Remarketing Agent on the Remarketing Settlement Date pursuant to Section 8.03.

Section 4.03 *Termination of Custody Account.*

Upon receipt by the Custodial Agent from the Corporation of notice of termination of this Agreement pursuant to Section 2.03, the Custodial Agent shall deliver the Custody Notes to the Property Trustee.

Section 4.04 *Waiver of Lien; Waiver of Set-off.*

The Custodial Agent waives any security interest, lien or right to make deductions or set-offs that it may now have or hereafter acquire in or with respect to the Custody Account, any financial asset credited thereto or any security entitlement in respect thereof. Neither the financial assets credited to the Custody Account nor the security entitlements in respect thereof will be subject to deduction, set-off, banker's lien or any other right in favor of any Person other than the Trust.

ARTICLE V

DISTRIBUTIONS ON COLLATERAL AND CUSTODY NOTES

Section 5.01 *Interest on Notes*.

(a) The Collateral Agent shall transfer all interest received from time to time by the Collateral Agent on account of the Pledged Notes to the Paying Agent.

(b) The Custodial Agent shall transfer all interest received from time to time by the Custodial Agent on account of the Custody Notes to the Paying Agent.

Section 5.02 *Payments Following Termination Event.*

Following a Termination Event, written notice of which the Collateral Agent or the Custodial Agent, as the case may be, shall have received from the Corporation, the Property Trustee or any of the Regular Trustees,

(a) the Collateral Agent shall cause the Securities Intermediary to Transfer (i) the Pledged Notes, (ii) the Pledged Treasury Securities and (iii) any Permitted Investments, including in each case any and all payments of principal or interest it receives in respect thereof, to the Property Trustee or its designee, free and clear of the Pledge created hereby; and

(b) the Custodial Agent shall Transfer the Custody Notes and any and all payments of principal or interest it receives in respect thereof to the Property Trustee or its designee.

Section 5.03 *Payments Prior to or on Stock Purchase Date.*

(a) Except as provided in Section 5.03(c) and Section 6.05, if the Collateral Agent or the Custodial Agent, as the case may be, shall not have received from the Corporation, the Property Trustee or any of the Regular Trustees notice of any Termination Event, all payments of principal received by the Collateral Agent or the Securities Intermediary in respect of (i) the Pledged Notes and (ii) the Pledged Treasury Securities shall be held until the Stock Purchase Date and an amount thereof equal to the Purchase Price under the Stock Purchase Contracts shall be transferred to the Corporation on the Stock Purchase Date as provided in Section 2.2 of the Stock Purchase Contract Agreement in satisfaction of the Trust's obligation to pay such Purchase Price. Any balance remaining in the Collateral Account shall be released from the Pledge and Transferred to the Paying Agent, free and clear of the Pledge created thereby. The Corporation shall instruct the Collateral Agent in writing as to the Permitted Investments in which any payments received under this Section 5.03(a) (which, for purpose of confirmation, includes the excess Proceeds received under Section 6.05(b)) shall be invested; provided that if the Corporation fails to deliver such instructions by 10:30 A.M. (New York City time) on the day such payments are received by the Collateral Agent, the Collateral Agent shall invest such payments in the Permitted Investments as described in clause (6) of the definition of Permitted Investments. The Collateral Agent shall have no liability in respect of losses incurred as a result of the failure of the Corporation to provide timely written investment direction. The Collateral Agent may conclusively rely on any written direction and shall bear no liability for any loss or

other damage based on acting or omitting to act under this Section 5.03 (which, for purpose of confirmation, includes acting or omitting to act under Section 6.05(b) in respect of excess Proceeds referred to therein) pursuant to any direction of the Corporation or any investment in Permitted Investments as described in clause (6) of the definition of Permitted Investments as provided herein and neither the Collateral Agent nor the Securities Intermediary shall in any way be liable for the selection of Permitted Investments or by reason of any insufficiency in the Collateral Account resulting from any loss on any Permitted Investment included therein.

(b) All payments of principal received by the Custodial Agent in respect of the Custody Notes shall be transferred to the Paying Agent.

(c) All payments of principal received by the Collateral Agent or the Securities Intermediary in respect of (i) the Pledged Notes and (ii) the Pledged Treasury Securities or security entitlements thereto, that, in each case, have been released from the Pledge pursuant hereto (other than Pledged Notes that upon such release shall have become Custody Notes in accordance with Section 6.03) shall be transferred to or in accordance with the written instructions of the Paying Agent.

Section 5.04 *Payments to Property Trustee.*

The Securities Intermediary and the Custodial Agent shall use commercially reasonable efforts to deliver payments to the Paying Agent or the Property Trustee as provided hereunder to the following account established by the Paying Agent or the Property Trustee, for credit to The Bank of New York, ABA# 021000018, A/C# GLA 111-565, for further credit to 155404, Ref: BAC Capital Trust XIII, Attn: Tina Gonzalez, not later than 12:00 P.M. (New York City time) on the Business Day it receives such payment; provided that if such payment is required to be made on a day that is not a Business Day or after 11:00 A.M. (New York City time) on a Business Day, then it shall use commercially reasonable efforts to deliver such payment to the Paying Agent or the Property Trustee no later than 10:30 A.M. (New York City time) on the next succeeding Business Day.

Section 5.05 *Assets Not Properly Released.*

If the Paying Agent or the Property Trustee shall receive any principal payments on account of financial assets credited to the Collateral Account and not released therefrom in accordance with this Agreement, the Paying Agent or the Property Trustee shall hold the same as trustee of an express trust for the benefit of the Corporation and, upon receipt of an Officers' Certificate of the Corporation so directing, promptly deliver the same to the Securities Intermediary for credit to the Collateral Account or to the Corporation for application to the Obligations, and the Paying Agent or the Property Trustee shall acquire no right, title or interest in any such payments of principal amounts so received. Neither the Paying Agent nor the Property Trustee shall have any liability under this Section 5.05 unless and until it has been notified in writing that such payment was delivered to it erroneously and nor shall it have any liability for any action taken, suffered or omitted to be taken prior to its receipt of such notice.

ARTICLE VI

INITIAL DEPOSIT; EXCHANGE OF PREFERRED HITS AND QUALIFYING TREASURY SECURITIES FOR TREASURY HITS AND CORPORATE HITS; REINVESTMENT OF PROCEEDS OF PLEDGED TREASURY SECURITIES

Section 6.01 *Initial Deposit of Notes.*

(a) Prior to or concurrently with the execution and delivery of this Agreement, the Property Trustee shall Transfer to the Securities Intermediary, for credit to the Collateral Account, Notes having an aggregate principal amount of Seven Hundred Million Dollars ($700,000,000).

(b) The Collateral Agent shall, at any time or from time to time, at the written request of the Corporation, cause any or all securities or other property underlying any financial assets credited to the Collateral Account to be registered in the name of the Securities Intermediary, the Collateral Agent or their respective nominees; provided that unless any Event of Default (as defined in the Declaration) shall have occurred and be continuing, and in respect of which the Collateral Agent shall have received written notice from the Property Trustee or the Regular Trustees, the Collateral Agent agrees not to cause any Notes to be so re-registered.

Section 6.02 *Exchange of Preferred HITS and Qualifying Treasury Securities for Treasury HITS and Corporate HITS*

(a) On each occasion on which a Holder of Preferred HITS exercises its rights pursuant to Sections 5.13(a)(i), (b) and (c) of the Declaration to exchange Preferred HITS and Qualifying Treasury Securities for Treasury HITS and Corporate HITS by, during any Exchange Period:

(i) depositing with the Collateral Agent the treasury security that is the Qualifying Treasury Security on the date of deposit, in the principal amount of $1,000 for each Preferred HITS being Exchanged;

(ii) Transferring the Preferred HITS being Exchanged to the Securities Registrar; and

(iii) delivering a duly executed and completed Splitting Notice and Request to the Securities Registrar and Collateral Agent (x) stating that the Holder has deposited the appropriate Qualifying Treasury Securities with the Collateral Agent for deposit in the Collateral Account, (y) stating that the Holder is Transferring the related Preferred HITS to the Securities Registrar in connection with an Exchange of such Preferred HITS and Qualifying Treasury Securities for a Like Amount of Treasury HITS and Corporate HITS, and (z) requesting the delivery to the Holder of such Treasury HITS and Corporate HITS,

the Collateral Agent shall, upon the deposit and Transfer pursuant to clauses (i) and (ii) and receipt of the notice and request referred to in clause (iii), (w) be deemed to accept the

Qualifying Treasury Securities deposited pursuant to clause (i) as Collateral subject to the Pledge, (x) release Pledged Notes of a Like Amount from the Pledge, (y) Transfer such Pledged Notes to the Custodial Account free and clear of the Corporation's security interest therein, and (z) confirm to the Property Trustee in writing that such release and Transfer has occurred. The Custodial Agent shall continue to hold such Notes as Custody Notes pursuant to Article IV.

(b) The Securities Registrar, pursuant to the procedures provided for in Section 5.11 of the Declaration dealing with increasing and decreasing the number of Trust Preferred Securities evidenced by Book-Entry HITS Certificates, shall cancel the number of Preferred HITS Transferred pursuant to Section 6.02(a) and deliver a Like Amount of Treasury HITS and Corporate HITS to the Holder, all by making appropriate notations on the Book-Entry HITS Certificates of the appropriate Class.

(c) The substitution of Qualifying Treasury Securities, or security entitlements thereto, for financial assets held in the Collateral Account pursuant to this Section 6.02, shall not constitute a novation of the security interest created hereby.

Section 6.03 *Exchange of Treasury HITS and Corporate HITS for Preferred HITS and Qualifying Treasury Securities*

(a) On each occasion on which a Holder of Treasury HITS and Corporate HITS exercises its rights pursuant to Section 5.13(d) of the Declaration to exchange Treasury HITS and Corporate HITS for Preferred HITS and Qualifying Treasury Securities by, during any Exchange Period, Transferring the Treasury HITS and the Corporate HITS being Exchanged to the Securities Registrar and delivering a duly executed and completed Recombination Notice and Request to the Securities Registrar and Collateral Agent (x) stating that the Holder is Transferring the related Treasury HITS and Corporate HITS to the Securities Registrar in connection with the Exchange of such Treasury HITS and Corporate HITS for a Like Amount of each of Preferred HITS and Qualifying Treasury Securities, (y) requesting the Collateral Agent to release from the Pledge and deliver to the Holder Pledged Treasury Securities in a principal amount equal to the Liquidation Amount of the Treasury HITS and Corporate HITS being exchanged, and (z) requesting the Securities Registrar to deliver to the Holder Preferred HITS of a Like Amount, then, upon the Transfer and receipt of the notice and request referred to in this Section 6.03(a), (i) the Custodial Agent will Transfer a Like Amount of Notes from the Custody Account to the Collateral Account in substitution for such Pledged Treasury Securities, (ii) the Collateral Agent will be deemed to accept the Notes Transferred by the Custodial Agent pursuant to clause (i) as Collateral subject to the Pledge, (iii) the Collateral Agent will release Pledged Treasury Securities of a Like Amount from the Pledge and deliver such Qualifying Treasury Securities to the Holder free and clear of the Corporation's security interest therein, and confirm in writing to the Property Trustee that such release and Transfer has occurred, and (iv) the Securities Registrar, pursuant to the procedures provided for in Section 5.11 of the Declaration dealing with increasing and decreasing the number of Trust Preferred Securities evidenced by Book-Entry HITS Certificates, shall cancel the number of Treasury HITS and Corporate HITS delivered pursuant to Section 6.03(a) and deliver a Like Amount of Preferred HITS to the Holder, all by making appropriate notations on the Book-Entry HITS Certificates of the appropriate Class.

(b) The substitution of Notes for financial assets held in the Collateral Account pursuant to this Section 6.03 shall not constitute a novation of the security interest created hereby.

Section 6.04 *Termination Event*.

(a) Upon receipt by the Collateral Agent of written notice from the Corporation, the Property Trustee or any of the Regular Trustees of the Trust that a Termination Event has occurred, the Collateral Agent shall release all Collateral from the Pledge and shall promptly instruct the Securities Intermediary to Transfer:

(i) any Pledged Notes;

(ii) the Proceeds of the Bank of America Deposit; and

(iii) any Pledged Treasury Securities,

to the Property Trustee, free and clear of the Pledge created hereby.

(b) If such Termination Event shall result from the Corporation's becoming a debtor under Bankruptcy Laws, and if the Collateral Agent shall for any reason fail promptly to effectuate the release and Transfer of all Pledged Notes, Pledged Treasury Securities, Permitted Investments, the Bank of America Deposit and Proceeds of any of the foregoing, as the case may be, as provided by this Section 6.04, the Regular Trustees shall:

(i) use their best efforts to obtain an opinion of a nationally recognized law firm to the effect that, notwithstanding the Corporation being the debtor in such a bankruptcy case, the Collateral Agent will not be prohibited from releasing or Transferring the Collateral as provided in this Section 6.04 and shall deliver or cause to be delivered such opinion to the Collateral Agent within ten calendar days after the occurrence of such Termination Event, and if (A) the Regular Trustees shall be unable to obtain such opinion within ten calendar days after the occurrence of such Termination Event or (B) the Collateral Agent shall continue, after delivery of such opinion, to refuse to effectuate the release and Transfer of all Pledged Notes, Pledged Treasury Securities, Permitted Investments, the Bank of America Deposit and Proceeds of any of the foregoing, as the case may be, as provided in this Section 6.04, then the Property Trustee, pursuant to the written direction of the Regular Trustees, shall, subject to Article VIII of the Declaration, within fifteen calendar days after the Property Trustee has received such direction from the Regular Trustees, commence an action or proceeding in the court having jurisdiction of the Corporation's case under the Bankruptcy Laws seeking an order requiring the Collateral Agent to effectuate the release and Transfer of all Pledged Notes, Pledged Treasury Securities, Permitted Investments, the Bank of America Deposit and Proceeds of any of the foregoing, or as the case may be, as provided by this Section 6.04; or

(ii) commence an action or proceeding like that described in Section 6.04(b)(i) hereof within ten days after the occurrence of such Termination Event.

Section 6.05 *Reinvestment of Proceeds of Pledged Treasury Securities*.

(a) At or about 11:00 A.M., New York City time, on each Trade Date, the Collateral Agent pursuant to the direction of the Regular Trustees shall select at least three Reference Dealers (including at least three Reference Dealers named on Schedule I hereto or named by any of the Regular Trustees as replacements therefor who are approved counterparties of The Bank of New York Trust Company) and request each of them to provide a commitment (which may be oral if promptly confirmed in writing by facsimile or e-mail), satisfactory in form to the Collateral Agent, to the effect that if selected as the Final Dealer, such Reference Dealer shall sell to the Collateral Agent, for delivery against payment on the immediately succeeding Roll Date, an aggregate principal amount of the U.S. treasury security that is the Qualifying Treasury Security on such Roll Date equal to the aggregate principal amount of Qualifying Treasury Securities held in the Collateral Account on such Trade Date. If the Collateral Agent shall have received at least two firm offers, it shall select the lowest offer and the Reference Dealer providing the lowest offer shall be the "***Final Dealer***"; provided that if two or more Reference Dealers have provided identical lowest offers, the Collateral Agent shall select any of these Reference Dealers as the Final Dealer in its absolute discretion. The Final Dealer shall be obligated to sell to the Collateral Agent, for Cash on the Roll Date, the aggregate principal amount of the U.S. treasury security specified in such offer. If the Collateral Agent determines, or has received notice from the Regular Trustees, that (i) a Market Disruption Event has occurred or (ii) fewer than two Reference Dealers have provided firm offers in a timely manner meeting the foregoing requirements, the steps contemplated above shall be taken on each succeeding Business Day on which the Collateral Agent determines, or has received notice from the Regular Trustees, that no Market Disruption Event has occurred until at least two Reference Dealers have provided such offers, except that the Collateral Agent shall request offers from the Reference Dealers for same day settlement. The Collateral Agent shall use reasonable care in administering the foregoing procedures and shall have no liability in connection therewith to the Trust, the Property Trustee, the Corporation or any other Person in the absence of gross negligence or willful misconduct. All determinations regarding whether a Market Disruption Event pursuant to clause (i) of the definition thereof has occurred shall be made by the Collateral Agent in its sole discretion.

(b) On each Roll Date (or, if no Final Dealer shall have been selected on the Trade Date, on the date that the Final Dealer is selected), the Collateral Agent shall instruct the Securities Intermediary to apply the Proceeds of the U.S. treasury securities held in the Collateral Account to the purchase price of the Qualifying Treasury Securities, which shall be deposited in the Collateral Account, and to apply the excess of such Proceeds over the purchase price of the Qualifying Treasury Securities to purchase Permitted Investments for deposit in the Collateral Account.

(c) On each Additional Distribution Date, if the Qualifying Treasury Securities shall have been purchased and deposited in the Collateral Account, the Collateral Agent shall liquidate the Permitted Investments in the Collateral Account and direct the Securities Intermediary to pay the Proceeds to the Payment Account.

Section 6.06 *Application of Proceeds in Settlement of Stock Purchase Contracts*

(a) The Trust (acting through the Property Trustee) agrees to pay the purchase price under the Stock Purchase Contracts on the Stock Purchase Date from the Proceeds of the Qualifying Treasury Securities held in the Collateral Account and the Bank of America Deposit (or in the circumstances set forth in the Stock Purchase Contract Agreement, by assignment thereof). Without receiving any further instruction from the Property Trustee, the Collateral Agent shall, in settlement of such Stock Purchase Contracts on the Stock Purchase Date, (i) instruct the Securities Intermediary to remit Proceeds of the Qualifying Treasury Securities to the Corporation and (ii) instruct Bank of America, N.A. to pay the Proceeds of the Bank of America Deposit to the Corporation in an amount equal to the excess of the Purchase Price over the amount of the Proceeds of the Qualifying Treasury Securities.

(b) In the event of a Failed Remarketing, the Collateral Agent, for the benefit of the Corporation, will, at the written instruction of the Corporation, deliver or dispose of the Pledged Notes in accordance with the Corporation's written instructions to satisfy in full, from any such disposition or retention, the obligations of the Trust to pay the purchase price for the shares of Preferred Stock to be issued under the Stock Purchase Contracts to the extent not paid from the Proceeds of the Qualifying Treasury Securities held in the Collateral Account.

(c) Thereafter, the Collateral Agent shall promptly remit the Proceeds of the Qualifying Treasury Securities held in the Collateral Account in excess of the aggregate purchase price for the shares of Preferred Stock to be issued under such Stock Purchase Contracts to the Property Trustee or to the Paying Agent on behalf of the Property Trustee for deposit into the Payment Account.

ARTICLE VII

VOTING RIGHTS — NOTES

Section 7.01 *Voting Rights*.

The Property Trustee on behalf of the Trust may, subject to the Declaration, exercise, or refrain from exercising, any and all voting and other consensual rights pertaining to the Notes or any part thereof for any purpose not inconsistent with the terms of this Agreement and in accordance with the terms of the Stock Purchase Contract Agreement; provided, however, that the Property Trustee shall not exercise or shall not refrain from exercising such right with respect to any Notes, if, in the reasonable judgment of the Property Trustee, such action would impair or otherwise have a material adverse effect on the value of all or any of the Notes; and provided, further, that the Property Trustee shall give the Corporation, the Collateral Agent and the Custodial Agent, at least five Business Days' prior written notice of the manner in which it intends to exercise, or its reasons for refraining from exercising, any such right. Upon receipt of any notices and other communications in respect of any Notes, including notice of any meeting at which holders of the Notes are entitled to vote or solicitation of consents, waivers or proxies of holders of the Notes, the Collateral Agent and the Custodial Agent shall use reasonable efforts to send promptly to the Property Trustee such notice or communication, and as soon as reasonably practicable after receipt of a written request therefor from the Property Trustee, execute and

deliver to the Property Trustee such proxies and other instruments in respect of such Notes (in form and substance satisfactory to the Collateral Agent or the Custodial Agent, as the case may be) as are prepared by the Corporation and delivered to the Property Trustee with respect to the Notes.

ARTICLE VIII

RIGHTS AND REMEDIES

Section 8.01 *Rights and Remedies of the Collateral Agent.*

(a) In addition to the rights and remedies specified in Section 6.04 or otherwise available at law or in equity, after an event of default (as specified in Section 8.01(b)) hereunder, the Collateral Agent shall have all of the rights and remedies with respect to the Collateral of a secured party under the UCC (whether or not the UCC is in effect in the jurisdiction where the rights and remedies are asserted) and the Trades Regulations and such additional rights and remedies to which a secured party is entitled under the laws in effect in any jurisdiction where any rights and remedies hereunder may be asserted. Without limiting the generality of the foregoing, such remedies may include, to the extent permitted by applicable law, (1) retention of the Pledged Notes or the Pledged Treasury Securities in full satisfaction of the Trust's or the Property Trustee's obligations under the Stock Purchase Contracts and the Stock Purchase Contract Agreement or (2) sale of the Pledged Notes or the Pledged Treasury Securities in one or more public or private sales as permitted by applicable law.

(b) Without limiting any rights or powers otherwise granted by this Agreement to the Collateral Agent, in the event the Corporation is unable to make payments from amounts transferred or transferable to the Corporation on account of the principal payments of any Pledged Treasury Securities as provided in Article V, in satisfaction of the Obligations of the Trust under the Stock Purchase Contracts, the inability to make such payments shall constitute an event of default hereunder and the Collateral Agent shall have and may exercise, with reference to such Pledged Treasury Securities any and all of the rights and remedies available to a secured party under the UCC and the Trades Regulations after default by a debtor, and as otherwise granted herein or under any other law.

(c) Without limiting any rights or powers otherwise granted by this Agreement to the Collateral Agent, the Collateral Agent is hereby irrevocably authorized to receive and collect all payments of (i) the principal amount of, and any interest on, the Pledged Notes and (ii) the principal amount of, and any interest on, the Pledged Treasury Securities, subject, in each case, to the provisions of Article V, and as otherwise granted herein.

(d) The Property Trustee agrees that, from time to time, upon the written request of the Corporation or the Collateral Agent (acting upon the request of the Corporation), the Property Trustee shall execute and deliver such further documents and do such other acts and things as the Corporation or the Collateral Agent (acting upon the request of the Corporation) may reasonably request in order to maintain the Pledge, and the perfection and priority thereof, and to confirm the rights of the Collateral Agent hereunder; provided that, in no event shall the Property Trustee be responsible for the preparation (other than execution upon the request of the

Corporation) or filing of any financing or continuation statements. In the absence of bad faith, the Property Trustee shall have no liability to the Corporation or the Collateral Agent (acting upon the request of the Corporation) for executing any documents or taking any such acts requested by the Corporation or the Collateral Agent (acting upon the request of the Corporation) hereunder.

Section 8.02 *Remarketing; Contingent Exchange Elections by Holder of Preferred HITS*

(a) In the event a Holder of Preferred HITS exercises its rights pursuant toSections 5.14(a)(i), (b) and (d) of the Declaration to contingently exchange Preferred HITS and Qualifying Treasury Securities for Treasury HITS and Corporate HITS in connection with any Remarketing,

(i) during the period that commences with the Collateral Agent's and the Securities Registrar's opening of normal business hours on the tenth Business Day immediately preceding the first day of a Remarketing Period and ending at 3:00 P.M., New York City time, on the second Business Day immediately preceding the first day of such Remarketing Period, Transferring the Preferred HITS that are the subject of such Contingent Exchange Election to the Securities Registrar, accompanied by a duly executed and completed Notice of Contingent Exchange Election; and

(ii) by not later than 3:00 P.M., New York City time, on the second Business Day immediately preceding the first day of such Remarketing Period, depositing with the Collateral Agent the treasury security that is the Qualifying Treasury Security on the date of deposit, in the amount of $1,000 for each Preferred HITS that is subject to the Contingent Exchange Election,

the Collateral Agent shall, upon the Transfer and receipt of the duly executed and completed Notice of Contingent Exchange Election pursuant toclause (i) and the deposit referred to in clause (ii), notify the Remarketing Agent not later than 11:00 A.M., New York City time, on the Business Day immediately preceding the first day of each Remarketing Period of the aggregate principal amount of Pledged Notes with respect to which elections have been validly made pursuant to this Section 8.02(a).

(b) Upon the receipt of notice from the Remarketing Agent that the Remarketing has been Successful, on the Remarketing Settlement Date,

(i) the Collateral Agent shall (A) instruct the Securities Intermediary to release from the Pledge and deliver to the Remarketing Agent the Pledged Notes for which no election has been validly made pursuant to Section 8.02(a), free and clear of the Corporation's security interest therein, against delivery by the Remarketing Agent of Qualifying Treasury Securities purchased with the net Proceeds of the sale of such Pledged Notes in the Remarketing for deposit in the Collateral Account, (B) instruct the Securities Intermediary to release from the Pledge and (C) Transfer to the Custody Account the Pledged Notes for which an election has been validly made pursuant to Section 8.02(a), free and clear of the Corporation's security interest therein, upon

delivery by the Collateral Agent to the Securities Intermediary for deposit into the Collateral Account the Qualifying Treasury Securities to be deposited in connection with such elections, and confirm to the Property Trustee in writing that such instructions have been delivered;

(ii) the Securities Intermediary will (A) release the Pledged Notes from the Pledge, Transfer such Pledged Notes, free and clear of the Pledge, (x) to the Remarketing Agent in the case of Pledged Notes for which no election has been validly made pursuant to Section 8.02(a) and (y) to the Custody Account in the case of Pledged Notes for which an election has been validly made pursuant to Section 8.02(a), (B) deposit in the Collateral Account as Pledged Treasury Securities the Qualifying Treasury Securities deposited with the Collateral Agent pursuant to Section 8.02(a) or delivered by the Remarketing Agent and (C) confirm to the Property Trustee in writing that such release, Transfer and deposit have occurred;

(iii) the Custodial Agent shall hold such Notes delivered to it pursuant to clause (ii)(y) of this Section 8.02(b) in the Custody Account; and

(iv) the Securities Registrar shall cancel the number of Preferred HITS Transferred pursuant to Section 8.02(a) and deliver a Like Amount of Corporate HITS and Treasury HITS to the Holder in accordance with the procedures provided for in Section 5.14 of the Declaration.

(c) Upon the receipt of notice from the Remarketing Agent that the Remarketing has not been Successful:

(i) as soon as reasonably practicable after the Remarketing, the Collateral Agent will deliver back to such Holder the Qualifying Treasury Securities delivered by such Holder to the Collateral Agent pursuant to Section 8.02(a); and

(ii) the Securities Registrar will disregard the delivery by such Holder of Preferred HITS pursuant to Section 8.02(a), with the consequence that such Holder shall be deemed to continue to hold such Preferred HITS.

(d) The substitution of Qualifying Treasury Securities, or security entitlements thereto, for financial assets held in the Collateral Account pursuant to this Section 8.02, shall not constitute a novation of the security interest created hereby.

Section 8.03 *Contingent Disposition Election by Holder of Corporate HITS*

(a) In the event a Holder of Corporate HITS exercises its rights pursuant to Sections 5.14(a)(ii), (b), (f) and (g) of the Declaration to contingently dispose of Corporate HITS in connection with any Remarketing by, during the period that commences with the Custodial Agent's and Securities Registrar's opening of normal business hours on the tenth Business Day immediately preceding the first day of a Remarketing Period and ending at 3:00 P.M., New York City time, on the second Business Day immediately preceding the first day of such Remarketing Period, Transferring the Corporate HITS that are the subject of such Contingent Disposition Election to the Securities Registrar and delivering a duly completed Notice of Contingent

Disposition Election to the Securities Registrar and the Custodial Agent, the Custodial Agent shall, upon such Transfer and receipt of such notice, notify the Remarketing Agent not later than 11:00 A.M., New York City time, on the Business Day immediately preceding the first day of each Remarketing Period of the aggregate principal amount of Custody Notes with respect to which elections have been validly made pursuant to this Section 8.03(a).

(b) If the Custodial Agent is notified by the Remarketing Agent that the related Remarketing is Successful:

(i) the Securities Registrar shall cancel the number of Corporate HITS Transferred pursuant to Section 8.03(a) in accordance with the procedures provided for in Section 5.11 of the Declaration;

(ii) the Custodial Agent shall deliver Custody Notes in the aggregate principal amount with respect to which elections have been validly made pursuant to Section 8.03(a) to the Remarketing Agent on the Remarketing Settlement Date; and

(iii) on or promptly after the Remarketing Settlement Date, the Custodial Agent will pay to the Property Trustee the net Proceeds of the Custody Notes received from the Remarketing Agent.

(c) If the Custodial Agent is notified by the Remarketing Agent that the related Remarketing is not Successful, the Securities Registrar will disregard the delivery by such Holder of Corporate HITS pursuant to Section 8.03(a), with the consequence that such Holder shall continue to hold such Corporate HITS.

(d) None of the Collateral Agent, the Securities Intermediary, the Custodial Agent, the Securities Registrar, the Property Trustee, the Corporation or the Remarketing Agent shall be obligated in any case to provide funds to make payment upon tender of Notes for Remarketing.

ARTICLE IX

REPRESENTATIONS AND WARRANTIES; COVENANTS

Section 9.01 *Representations and Warranties*.

The Property Trustee on behalf of the Trust hereby represents and warrants to the Collateral Agent that:

(a) the Property Trustee on behalf of the Trust has the power to grant a security interest in and lien on the Collateral; and

(b) the Property Trustee on behalf of the Trust is the sole beneficial owner of the Collateral and, in the case of Collateral delivered in physical form, is the sole holder of such Collateral and is the sole beneficial owner of, or has the right to Transfer, the Collateral it Transfers to the Collateral Agent for credit to the Collateral Account, free and clear of any security interest, lien, encumbrance, call, liability to pay money or other restriction other than the security interest and lien granted under Article II hereof.

Section 9.02 *Covenants*.

The Property Trustee on behalf of the Trust hereby covenants to the Collateral Agent that for so long as the Collateral remains subject to the Pledge:

(a) it will not create or purport to create or allow to subsist any mortgage, charge, lien, pledge or any other security interest whatsoever over the Collateral or any part of it other than pursuant to this Agreement; and

(b) it will not sell or otherwise dispose (or attempt to dispose) of the Collateral or any part of it except in accordance with the terms of this Agreement.

ARTICLE X

THE COLLATERAL AGENT, THE CUSTODIAL AGENT, THE SECURITIES INTERMEDIARY AND THE SECURITIES REGISTRAR

It is hereby agreed as follows:

Section 10.01 *Appointment, Powers and Immunities*.

The Collateral Agent and the Securities Intermediary shall act as agents for the Corporation hereunder with such powers as are specifically vested in the Collateral Agent or the Securities Intermediary, as the case may be, by the terms of this Agreement and the Collateral Agent and the Securities Intermediary owe no duties, fiduciary or otherwise, to any other Person except as provided by applicable law. The Custodial Agent and the Securities Registrar shall act as agents for the Property Trustee hereunder with such powers as are specifically vested in the Custodial Agent or the Securities Registrar, as the case may be, by the terms of this Agreement and, in the case of the Securities Registrar, the Declaration and the Custodial Agent and the Securities Registrar owe no duties, fiduciary or otherwise, to any other Person except as provided by applicable law. The Collateral Agent, the Custodial Agent, the Securities Intermediary and the Securities Registrar shall:

(a) have no duties or responsibilities except those expressly set forth in this Agreement and no implied covenants or obligations shall be inferred from this Agreement against the Collateral Agent, the Custodial Agent, the Securities Intermediary and the Securities Registrar, nor shall the Collateral Agent, the Custodial Agent, the Securities Intermediary and the Securities Registrar be bound by the provisions of any agreement by any party hereto beyond the specific terms hereof;

(b) not be responsible for any recitals contained in this Agreement, or in any certificate or other document referred to or provided for in, or received by it under, this Agreement, the HITS or the Stock Purchase Contract Agreement, or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement (other than as against the Collateral Agent, the Custodial Agent or the Securities Registrar, as the case may be), the HITS, any Collateral or the Stock Purchase Contract Agreement or any other document referred to or provided for herein or therein or for any failure by the Corporation or any other Person

(except the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar, as the case may be) to perform any of its obligations thereunder or hereunder or for the validity, perfection, enforceability, priority or, except as expressly required hereby, maintenance of any security interest created hereunder;

(c) not be required to initiate or conduct any litigation or collection efforts or proceedings hereunder (except pursuant to directions furnished under Section 10.02, subject to Section 10.08);

(d) not be responsible for the exercise of any of the rights and remedies (at the direction of the Property Trustee or the Holders of the HITS, or otherwise) upon a default or event of default under the Supplemental Indenture;

(e) not be responsible for any action taken, suffered or omitted to be taken by it hereunder or under any other document or instrument referred to or provided for herein or in connection herewith or therewith, except for its own gross negligence or willful misconduct; and

(f) not be required to advise any party as to selling or retaining, or taking or refraining from taking any action with respect to, any securities or other property deposited hereunder.

Subject to the foregoing, during the term of this Agreement, the Collateral Agent, the Securities Intermediary, the Custodial Agent and Securities Registrar shall take all reasonable action in connection with the safekeeping and preservation of the Collateral and the Custody Notes hereunder as determined by industry standards.

No provision of this Agreement shall require the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder. In no event shall the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar be liable for any amount in excess of the Value of the Collateral and the Custody Notes.

Section 10.02 *Instructions of the Corporation.*

The Corporation shall have the right, by one or more written instruments executed and delivered to the Collateral Agent, to direct the time, method and place of conducting any proceeding for the realization of any right or remedy available to the Collateral Agent, or of exercising any power conferred on the Collateral Agent, or to direct the taking or refraining from taking of any action authorized by this Agreement; provided that (i) such direction shall not conflict with the provisions of any law or of this Agreement or involve the Collateral Agent in personal liability and (ii) the Collateral Agent shall be indemnified as provided herein. Nothing contained in this Section 10.02 shall impair the right of the Collateral Agent in its discretion to take any action or omit to take any action which it deems proper and which is not inconsistent with such direction. None of the Collateral Agent, the Custodial Agent or the Securities Registrar has any obligation or responsibility for determining the necessity of filing or to file or monitor the filing of UCC financing statements or other UCC statements.

Section 10.03 *Reliance by Collateral Agent, Custodial Agent, Securities Intermediary and Securities Registrar.*

Each of the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar shall be entitled to rely conclusively upon any certification, order, judgment, opinion, notice or other written or telephonic communication (including, without limitation, any thereof by e-mail or similar electronic means, telecopy, telex or facsimile) believed by it to be genuine and to have been signed or sent by or on behalf of the proper Person or Persons (without being required to determine the correctness of any fact stated therein). Each of the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar may consult with legal counsel or other experts of its selection and the advice, opinions and statements of such legal counsel and other experts and any opinion of counsel 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 reliance thereon. As to any matters not expressly provided for by this Agreement, the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar shall in all cases be fully protected in acting, suffering, or in refraining from acting hereunder in accordance with instructions given by the Corporation or the Property Trustee in accordance with this Agreement. In the event any instructions are given (other than in writing at the time of the execution of the Agreement), whether in writing, by telecopier or otherwise, the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar are authorized (but shall not be required) to seek confirmation of such instructions by telephone call-back to the person or persons designated on Schedule II hereto, and the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar may conclusively rely upon the confirmations of anyone purporting to be the Person or Persons so designated. The persons and telephone numbers for call-backs may be changed only in writing actually received and acknowledged by the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar.

It is understood that the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar in any funds transfer may rely solely upon any account numbers or similar identifying numbers provided by the Corporation or the Property Trustee to identify (i) the beneficiary, (ii) the beneficiary's bank, or (iii) an intermediary bank. The Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar may apply any of the deposited funds for any payment order it executes using any such identifying number, even where its use may result in a Person other than the beneficiary being paid, or the transfer of funds to a bank other than the beneficiary's bank, or an intermediary bank, designated by the Corporation or the Property Trustee; provided that payment is made and confirmed to the account as specified by the Corporation or the Property Trustee, as the case may be.

Section 10.04 *Certain Rights*.

(a) Whenever in the administration of the provisions of this Agreement the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering or omitting to take any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of bad faith on the part of the Collateral

Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar, be deemed to be conclusively proved and established by a certificate signed by one of the Corporation's officers, and delivered to the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar and such certificate, in the absence of bad faith on the part of the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar, shall be full warrant to the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar for any action taken, suffered or omitted by any of them under the provisions of this Agreement in reliance thereon.

(b) The Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar 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, entitlement order, approval or other paper or document.

(c) None of the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar shall be responsible or liable for any failure or delay in the performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God, earthquakes, fires, floods, terrorism, wars, civil or military disturbances, sabotage, epidemics, riots, interruptions, loss or malfunctions of utilities, computer (hardware or software) or communication services, accidents, labor disputes, acts of civil or military authority and governmental action.

(d) The Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar may request that the Corporation and the Property Trustee each deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Agreement, which Officers' Certificate may be signed by any person authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded.

(e) The permissive right of the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar to take or refrain from taking any actions enumerated in this Agreement shall not be construed as a duty;

(f) None of the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar shall be liable for any error of judgment made in good faith, unless it shall have been grossly negligent in ascertaining the pertinent facts.

(g) The Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar shall have no liability whatsoever for the action or inaction of any Clearing Agency or any book-entry system thereof. In no event shall any Clearing Agency or any book-entry system thereof be deemed an agent or subcustodian of the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar. Unless and until Definitive HITS Certificates have been issued to Owners pursuant to Section 5.15 of the Declaration, the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar shall be entitled to deal with the Clearing Agency for all purposes of this Agreement (including the receipt or transfer of any funds hereunder) as the Holder of the Trust Preferred Securities,

shall have no obligation to the Owners and the rights of the Owners shall be exercised only through the Clearing Agency and shall be limited to those established by law and agreement between such Owners and the Trust or the Clearing Agency Participants. The provisions of Sections 5.6 and 5.11 of the Declaration are hereby made applicable to the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar, mutatis mutandis, as if they were the Securities Registrar as referred to therein.

(h) The Securities Registrar shall also have all of the rights, privileges, protections, immunities and benefits given to the Securities Registrar under the Declaration, including its right to be indemnified. In the event of any conflict between any of the provisions of the Declaration and this Agreement with respect to any of such rights, privileges, protections, immunities and benefits, the provisions of this Agreement shall govern and control and supersede such other provisions.

Section 10.05 *Merger, Conversion, Consolidation or Succession to Business.*

Any Person into which the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar shall be a party, or any Person succeeding to all or substantially all of the corporate trust business of the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar shall be the successor of the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar hereunder without the execution or filing of any paper with any party hereto or any further act on the part of any of the parties hereto except where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding.

Section 10.06 *Rights in Other Capacities.*

The Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar and their Affiliates may (without having to account therefor to the Corporation) accept deposits from, lend money to, make their investments in and generally engage in any kind of banking, trust or other business with the Trust, any other Person interested herein and any Holder of Trust Preferred Securities (and any of their respective subsidiaries or Affiliates) as if it were not acting as the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar, as the case may be, and the Collateral Agent, the Securities Intermediary, the Custodial Agent, the Securities Registrar and their Affiliates may accept fees and other consideration from the Trust, any other Person interested herein and any Holder of Trust Preferred Securities without having to account for the same to the Corporation; provided that each of the Securities Registrar, the Securities Intermediary, the Custodial Agent and the Collateral Agent covenants and agrees with the Corporation that it shall not accept, receive or permit there to be created in favor of itself and shall take no affirmative action to permit there to be created in favor of any other Person, any security interest, lien or other encumbrance of any kind in or upon the Collateral other than the lien created by the Pledge.

Section 10.07 *Non-reliance on Collateral Agent, the Securities Intermediary, the Custodial Agent and Securities Registrar.*

None of the Securities Registrar, the Securities Intermediary, the Custodial Agent or the Collateral Agent shall be required to keep itself informed as to the performance or observance by the Trust or any Holder of Trust Preferred Securities of this Agreement, the Stock Purchase Contract Agreement, the Trust Preferred Securities or any other document referred to or provided for herein or therein or in connection herewith or therewith or to inspect the properties or books of the Trust or any Holder of Trust Preferred Securities. None of the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar shall have any duty or responsibility to provide the Corporation or the Property Trustee with any credit or other information concerning the affairs, financial condition or business of the Trust or the Corporation or any Holder of Trust Preferred Securities (or any of their respective Affiliates) that may come into the possession of the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar or any of their respective Affiliates.

Section 10.08 *Compensation and Indemnity*.

The Corporation agrees to:

(a) pay the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar from time to time such compensation as shall be agreed in writing between the Corporation and the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar, as the case may be, for all services rendered by them hereunder;

(b) indemnify and hold harmless the Collateral Agent, the Securities Intermediary, the Custodial Agent, the Securities Registrar and each of their respective directors, officers, agents and employees (collectively, the "***Indemnitees***"), from and against any and all claims, liabilities, losses, damages, fines, penalties and expenses (including reasonable fees and expenses of counsel) and taxes (other than those based upon, determined by or measured by the income of the Collateral Agent, the Custodial Agent and the Securities Registrar) (collectively, "***Losses***" and individually, a "***Loss***") that may be imposed on, incurred by, or asserted against, the Indemnitees or any of them for or in respect of the Collateral Agent's, the Securities Intermediary's, the Custodial Agent's and the Securities Registrar's (i) execution and delivery of this Agreement and (ii) following any instructions or other directions upon which either the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar is entitled to rely pursuant to the terms of this Agreement; and

(c) in addition to and not in limitation of clause (b) immediately above, indemnify and hold the Indemnitees and each of them harmless from and against any and all Losses that may be imposed on, incurred by or asserted against, the Indemnitees or any of them in connection with or arising out of the Collateral Agent's, the Securities Intermediary's, the Custodial Agent's or the Securities Registrar's acceptance or performance of its powers and duties under this Agreement, provided that any Indemnitee with respect to the specific Loss against which indemnification is sought under this clause (c) has not acted with gross negligence or engaged in willful misconduct.

The provisions of this Section 10.08 and Section 12.07 shall survive the resignation or removal of the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar and the termination of this Agreement.

Section 10.09 *Failure to Act.*

In the event of (i) uncertainty on the part of the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar as to the application of any provision in this Agreement or any other agreement relating to the transaction contemplated hereby or (ii) any ambiguity in the provisions of this Agreement or any dispute between or conflicting claims by or among the parties hereto or any other Person with respect to any funds or property deposited hereunder, such Collateral Agent, Securities Intermediary, Custodial Agent or Securities Registrar in the case of (i) or each of the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar in the case of (ii) shall be entitled, at its sole option and after prompt written notice to the Corporation and the Trust, to refrain from taking any action in respect of such uncertainty or ambiguous provision or to refuse to comply with any and all claims, demands or instructions with respect to such property or funds so long as such dispute or conflict shall continue, and the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar shall not be or become liable in any way to any of the parties hereto for its so refraining or refusal to comply with such conflicting claims, demands or instructions. The Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar shall be entitled to refuse to act until either:

(a) such ambiguous provisions or conflicting or adverse claims or demands, as the case may be, shall have been finally determined by a court of competent jurisdiction or settled by agreement between the conflicting parties as evidenced in a writing satisfactory to the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar; or

(b) the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar shall have received security or an indemnity satisfactory to it sufficient to save it harmless from and against any and all loss, liability or reasonable out-of-pocket expense which it may incur by reason of its acting.

The Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar may in addition elect to commence an interpleader action or seek other judicial relief or orders as the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar may deem necessary. Notwithstanding anything contained herein to the contrary, none of the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar shall be required to take any action that it reasonably believes to be contrary to law or to the terms of this Agreement, or which it reasonably believes would subject it or any of its officers, employees or directors to liability.

Section 10.10 *Resignation of Collateral Agent, the Securities Intermediary, the Custodial Agent and Securities Registrar.*

Subject to the appointment and acceptance of a successor Collateral Agent, Securities Intermediary, Custodial Agent and Securities Registrar as provided below:

(i) the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar may resign at any time by giving notice thereof to the Corporation and the Property Trustee;

(ii) the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar may be removed at any time by the Corporation; and

(iii) if the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar fails to perform any of its material obligations hereunder in any material respect for a period of not less than 20 days after receiving written notice of such failure by the Property Trustee or the Regular Trustees and such failure shall be continuing, the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar may be removed by the Property Trustee or the Regular Trustees;

provided that any Person at any time acting as Collateral Agent, Securities Intermediary, Custodial Agent or Securities Registrar may not resign or be removed in any one of those capacities without the consent of each party to this Collateral Agreement unless it resigns or is removed in all such capacities in which it is then acting. The Property Trustee or the Regular Trustees shall promptly notify the Corporation of any removal of the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar pursuant to clause (iii) of this Section 10.10. Upon any such resignation or removal, the Corporation shall have the right to appoint a successor Collateral Agent, Securities Intermediary, Custodial Agent or Securities Registrar, as the case may be, which shall not be an Affiliate of the Trust. If no successor Collateral Agent, Securities Intermediary, Custodial Agent or Securities Registrar shall have been so appointed and shall have accepted such appointment within 30 days after the retiring Collateral Agent's, Securities Intermediary's, Custodial Agent's or Securities Registrar's giving of notice of resignation or the Corporation's or the Property Trustee's giving notice of such removal, then the retiring or removed Collateral Agent, Securities Intermediary, Custodial Agent or Securities Registrar may petition any court of competent jurisdiction, at the expense of the Corporation, for the appointment of a successor Collateral Agent, Securities Intermediary, Custodial Agent or Securities Registrar. The Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar shall each be a bank or a national banking association which has an office (or an agency office) in New York City with a combined capital and surplus of at least $50,000,000. Upon the acceptance of any appointment as Collateral Agent, Securities Intermediary, Custodial Agent or Securities Registrar hereunder by a successor Collateral Agent, Securities Intermediary, Custodial Agent or Securities Registrar, as the case may be, such successor Collateral Agent, Securities Intermediary, Custodial Agent or Securities Registrar, as the case may be, shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent, Securities Intermediary, Custodial Agent or Securities Registrar, as the case may be, and the retiring Collateral Agent, Securities Intermediary, Custodial Agent or Securities Registrar, as the case may be, shall take all appropriate action, subject to payment of any amounts then due and payable to it hereunder, to transfer any money and property held by it hereunder (including the Collateral) to such successor. The retiring Collateral Agent, Securities Intermediary, Custodial Agent or Securities Registrar shall, upon such succession, be discharged from its duties and obligations as Collateral Agent, Securities Intermediary, Custodial Agent or Securities Registrar hereunder. After any retiring Collateral Agent's, Securities Intermediary's, Custodial Agent's or Securities Registrar's

resignation or removal hereunder as Collateral Agent, Securities Intermediary, Custodial Agent or Securities Registrar, the provisions of this Article X shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Collateral Agent, Securities Intermediary, Custodial Agent or Securities Registrar. Any resignation or removal of the Collateral Agent, Custodial Agent or Securities Registrar hereunder, at a time when such Person is acting as the Collateral Agent, Securities Intermediary, Custodial Agent or Securities Registrar, shall be deemed for all purposes of this Agreement as the simultaneous resignation or removal of the Collateral Agent, Securities Registrar or Custodial Agent, as the case may be.

Section 10.11 *Right to Appoint Agent or Advisor.*

The Collateral Agent shall have the right to appoint agents or advisors in connection with any of its duties hereunder, and the Collateral Agent shall not be liable for any action taken, suffered or omitted by, or in reliance upon the advice of, such agents or advisors selected in good faith. The appointment of agents (which, for the purpose of this sentence, excludes legal counsel) pursuant to this Section 10.11 shall be subject to prior written consent of the Corporation, which consent shall not be unreasonably withheld.

Section 10.12 *Survival.*

The provisions of this Article X and Section 12.06 shall survive termination of this Agreement and the resignation or removal of the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar.

Section 10.13 *Exculpation*.

Anything contained in this Agreement to the contrary notwithstanding, in no event shall the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar or their officers, directors, employees or agents be liable under this Agreement for indirect, special, punitive, or consequential loss or damage of any kind whatsoever, including, but not limited to, lost profits, whether or not the likelihood of such loss or damage was known to the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar, or any of them and regardless of the form of action.

Section 10.14 *Statements and Confirmations.*

The Securities Intermediary will, as soon as reasonably practicable after receipt of same, send copies of all statements, confirmations and other correspondence concerning the Collateral Account and any financial assets credited thereto simultaneously to each of the Property Trustee and the Collateral Agent at their addresses for notices under this Agreement. The Custodial Agent will, as soon as reasonably practicable after receipt of same, send copies of all statements, confirmations and other correspondence concerning the Custody Account and any financial assets credited thereto to the Property Trustee at its address for notices under this Agreement.

Section 10.15 *Tax Allocations.*

The Regular Trustees shall report all items of income, gain, expense and loss recognized in the Collateral Account and the Custody Account, to the extent such reporting is required by law, to the Internal Revenue Service authorities in the manner required by law. None of the Securities Intermediary, the Collateral Agent, the Custodial Agent, the Securities Registrar or the Property Trustee shall have any tax reporting duties hereunder.

ARTICLE XI

AMENDMENT

Section 11.01 *Amendment.*

The Corporation, when duly authorized by resolution of its Board of Directors, the Collateral Agent, the Securities Intermediary, the Custodial Agent, the Securities Registrar and the Property Trustee on behalf of the Trust, at any time and from time to time, may amend this Agreement by a written instrument, in form satisfactory to the Corporation, the Collateral Agent, the Securities Intermediary, the Custodial Agent, the Securities Registrar and the Property Trustee, as provided under Section 6.1(c) of the Declaration. Notwithstanding the foregoing, any amendment to the forms of HITS certificates attached as exhibits hereto shall be effective upon written notice thereof from the Corporation without the consent of the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar setting forth the revised form or forms and confirming that such revised form or forms have been duly adopted in accordance with the Declaration; provided that no such amendment that adversely affects the rights, duties or immunities of the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar shall be effective against such adversely affected party without its consent.

Section 11.02 *Execution of Amendments.*

In executing any amendment permitted by this Article XI, the Collateral Agent, the Securities Intermediary, the Custodial Agent, the Securities Registrar and the Property Trustee shall be entitled to receive and (subject to Section 8.3 of the Declaration with respect to the Property Trustee) shall be fully authorized and protected in relying upon, an opinion of counsel and an Officers' Certificate of the Corporation to the effect that all of the requirements of Section 6.1(c) of the Declaration in respect of such amendment have been met and/or satisfied. The Collateral Agent, the Securities Intermediary, the Custodial Agent, the Securities Registrar and the Property Trustee may, but shall not be obligated to, enter into any such amendment which affects their own respective rights, duties or immunities under this Agreement or otherwise.

ARTICLE XII

MISCELLANEOUS

Section 12.01 *No Waiver*.

No failure on the part of the Corporation, the Collateral Agent, the Securities Intermediary, the Custodial Agent, the Securities Registrar or any of their respective agents to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy hereunder shall operate a waiver thereof; nor shall any single or partial exercise by the Corporation, the Securities Intermediary, the Collateral Agent, the Custodial Agent, the Securities Registrar or any of their respective agents of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies herein are cumulative and are not exclusive of any remedies provided by law.

Section 12.02 *Governing Law; Submission to Jurisdiction; Waiver of Trial by Jury*.

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. The Corporation, the Collateral Agent, the Securities Intermediary, the Custodial Agent, the Securities Registrar and the Trust hereby submit to the nonexclusive jurisdiction of the United States District Court for the Southern District of New York and the courts of the State of New York (in each case sitting in New York County) for the purposes of all legal proceedings arising out of or relating to this Agreement or the transactions contemplated hereby. The Corporation, the Collateral Agent, the Securities Intermediary, the Custodial Agent, the Securities Registrar and the Trust irrevocably waive, to the fullest extent permitted by applicable law, any objection that they may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum. **TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

Section 12.03 *Notices*.

All notices, requests, consents and other communications provided for herein (including, without limitation, any modifications of, or waivers or consents under, this Agreement) shall be given or made in writing (including, without limitation, by telecopy) delivered to the intended recipient at the "*Address for Notices*" specified below its name on the signature pages hereof or, as to any party, at such other address as shall be designated by such party in a notice to the other parties. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given when personally delivered or, in the case of a mailed or telecopied notice, upon receipt, in each case given or addressed as aforesaid.

Section 12.04 *Successors and Assigns*.

This Agreement shall be binding upon and inure to the benefit of the respective successors of the Corporation, the Collateral Agent, the Custodial Agent, the Securities Intermediary, the Securities Registrar and the Trust.

Nothing in this Agreement, express or implied, shall give any Person, other than the parties hereto and their permitted successors, any benefit or any legal or equitable right, remedy or claim under this Agreement.

Section 12.05 *Severability*.

If any provision hereof is invalid and unenforceable in any jurisdiction, then, to the fullest extent permitted by law, (a) the other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in order to give effect to the intentions of the parties hereto as nearly as may be possible and (b) the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

Section 12.06 *Expenses, Etc*.

The Corporation agrees to reimburse the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar for:

(a) all reasonable costs and expenses of the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar (including, without limitation, the reasonable fees and expenses of counsel to the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar), in connection with (i) the negotiation, preparation, execution and delivery or performance of this Agreement and (ii) any modification, supplement or waiver of any of the terms of this Agreement;

(b) all reasonable costs and expenses of the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar (including, without limitation, the reasonable fees and expenses of counsel) in connection with (i) any enforcement or proceedings resulting or incurred in connection with causing the Trust or the Property Trustee to satisfy its obligations under the Stock Purchase Contracts or the Stock Purchase Contract Agreement and (ii) the enforcement of this Section 12.06;

(c) all transfer, stamp, documentary or other similar taxes, assessments or charges levied by any governmental or revenue authority in respect of this Agreement or any other document referred to herein and all costs, expenses, taxes, assessments and, subject to Section 10.01(b) and the last sentence of Section 10.01, other charges incurred in connection with any filing, registration, recording or perfection of any security interest contemplated hereby;

(d) all reasonable fees and expenses of any agent or advisor appointed by the Collateral Agent and (except in the case of legal counsel) consented to by the Corporation under Section 10.11; and

(e) any other out-of-pocket costs and expenses reasonably incurred by the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar in connection with the performance of their duties hereunder.

Section 12.07 *Security Interest Absolute*.

All rights of the Collateral Agent and security interests hereunder, and all obligations of the Trust from time to time hereunder, shall be absolute and unconditional irrespective of:

(a) any lack of validity or enforceability of any provision of the Stock Purchase Contracts or any other agreement or instrument relating thereto;

(b) any change in the time, manner or place of payment of, or any other term of, or any increase in the amount of, all or any of the Obligations under the Stock Purchase Contracts, or any other amendment or waiver of any term of, or any consent to any departure from any requirement of, the Stock Purchase Contract Agreement or any Stock Purchase Contract or any other agreement or instrument relating thereto; or

(c) any other circumstance which might otherwise constitute a defense available to, or discharge of, a borrower, a guarantor or a pledgor.

Section 12.08 *Notice of Termination Event.*

Upon the occurrence of a Termination Event, the Corporation shall deliver written notice to the Property Trustee, the Collateral Agent, the Custodial Agent and the Securities Registrar. Upon the written request of the Collateral Agent or the Securities Registrar, the Corporation shall inform such party whether or not a Termination Event has occurred.

Section 12.09 *Incorporation by Reference.*

In connection with its execution and performance hereunder the Property Trustee is entitled to all rights, privileges, protections, immunities, benefits and indemnities provided to it under the Declaration.

Section 12.10 *No Recourse.*

It is expressly understood and agreed by the parties hereto that (a) this Agreement is executed and delivered by The Bank of New York, not individually or personally but solely as Property Trustee of the Trust, in the exercise of the powers and authority conferred and vested in it, (b) each of the representations, warranties, covenants, undertakings and agreements herein made on the part of the Trust is made and intended not as personal representations, warranties, covenants, undertakings and agreements by The Bank of New York but is made and intended for the purpose of binding only the Trust, (c) nothing herein contained shall be construed as creating any liability on The Bank of New York, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto and by any Person claiming by, through or under the parties hereto and (d) under no circumstances shall The Bank of New York be personally liable for the payment of any indebtedness or expenses of the Trust or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Trust under this Agreement or any other related documents.

* * * *

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

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

BANK OF AMERICA CORPORATION

By: /s/ Ann J. Travis
Name: Ann J. Travis
Title: Senior Vice President

Address for Notices:

Bank of America Corporation
Bank of America Corporate Center
NC1-007-07-06
100 North Tryon Street
Charlotte, North Carolina 28255
Facsimile: (704) 386-0270
Attention: Corporate Treasury—Securities Administration

THE BANK OF NEW YORK TRUST COMPANY, N.A.,
as Collateral Agent, Securities Intermediary, Custodial Agent and Securities Registrar

By: /s/ Tina D. Gonzales
Name: Tina D. Gonzales
Title: Assistant Treasurer

Address for Notices:

Towermarc Plaza
10161 Centurion Parkway
Jacksonville, Florida 32256
Attention: Corporate Trust Department
Telephone: (904) 645-1900
Facsimile: (904) 645-1921

BAC CAPITAL TRUST XIII

By: The Bank of New York, not in its individual capacity but solely as Property Trustee

By: /s/ Alexander Pabon
Name: Alexander Pabon
Title: Assistant Vice President

Address for Notices:

The Bank of New York,
as Property Trustee on behalf of
BAC Capital Trust XIII
101 Barclay Street, 8 West
New York, New York 10286
Facsimile: (904) 645-1921
Attention: Corporate Trust Trustee Administration

Exhibit A

FORM OF PREFERRED HITS CERTIFICATE

{*For inclusion in Global Certificates only* – THIS CERTIFICATE IS A GLOBAL CERTIFICATE WITHIN THE MEANING OF THE DECLARATION HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY (THE "***DEPOSITARY***") OR ITS NOMINEE. THIS CERTIFICATE IS EXCHANGEABLE FOR CERTIFICATES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE DECLARATION AND NO TRANSFER OF THIS CERTIFICATE (OTHER THAN A TRANSFER OF THIS CERTIFICATE AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY 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, IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENTAL AGENCY AND INVOLVES INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF PRINCIPAL.

No. _____ Number of Preferred HITS: _____

CUSIP No.: 05518UAA5
ISIN: US05518UAA51

BAC Capital Trust XIII

Preferred HITS

This Preferred HITS Certificate certifies that **[__]** is the registered Holder of the number of Preferred HITS set forth above {*for inclusion in Global Certificates only* - or such other number of Preferred HITS reflected in the Schedule of Increases and Decreases in the Global Certificate attached hereto}. Each Preferred HITS represents a beneficial interest in BAC Capital Trust XIII (the "***Trust***"), having a Liquidation Amount of $1,000. The Preferred HITS 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 as provided in

Section 5.4 of the Declaration (as defined below). The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Preferred HITS are set forth in, and this certificate and the Preferred HITS represented hereby are issued and shall in all respects be subject to the terms and provisions of the Amended and Restated Declaration of Trust, dated as of February 16, 2007, as the same may be amended and restated from time to time (the "***Declaration***"), including the designation of the terms of the Preferred HITS as set forth therein. The Holder is entitled to the benefits of the Guarantee Agreement entered into by the Sponsor and The Bank of New York, as Guarantee Trustee, dated as of February 16, 2007 (the "***Guarantee Agreement***"). All capitalized terms used herein that are defined in the Declaration have the meaning set forth therein.

Section 5.13(b) of the Declaration provides for the procedures pursuant to which Holders of Preferred HITS may exchange Preferred HITS and Qualifying Treasury Securities for Treasury HITS and Corporate HITS and Section 5.14(d) of the Declaration provides for the procedures pursuant to which Holders of Preferred HITS may elect to exchange Preferred HITS and Qualifying Treasury Securities for Treasury HITS and Corporate HITS in the event a Remarketing is Successful. The forms of Splitting Notice and Request and Notice of Contingent Exchange Election required to be delivered in connection therewith are printed on the reverse hereof.

A copy of each of the Declaration and the Guarantee Agreement is available for inspection at the offices of the Property Trustee.

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

IN WITNESS WHEREOF, the Trust acting through one of its Regular Trustees has executed this Preferred HITS Certificate.

BAC CAPITAL TRUST XIII, acting through
one of its Regular Trustees

By: _____
Name: _____

Date: _____

CERTIFICATE OF AUTHENTICATION

This certificate represents the Preferred HITS referred to in the within-mentioned Declaration.

Dated:

THE BANK OF NEW YORK TRUST COMPANY, N.A.,
as Securities Registrar

By: _____
Authorized Signatory

Distributions payable on each Preferred HITS will be set at, (i) from the Closing Date to but not including the later of March 15, 2012 and the Stock Purchase Date (and for each related Distribution Period), Three-Month LIBOR plus 0.40% per annum (calculated on an Actual/360 Basis) and (ii) thereafter, for each Distribution Period and related Regular Distribution Date, the greater of (A) Three-Month LIBOR for such Distribution Period plus 0.40% and (B) 4.00 % of the Liquidation Amount per Preferred HITS (calculated on an Actual/360 Basis) (the "***Coupon Rate***"). The Coupon Rate is payable on the stated liquidation amount of $1,000 per Preferred HITS, 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 will bear interest thereon (to the extent permitted by applicable law) at the Coupon Rate, compounded quarterly. The amount of Distributions payable for any period will be computed on the basis of a 360-day year and the number of days actually elapsed.

Except as otherwise described below, Distributions on the Preferred HITS will accrue from the date of original issuance and will be payable quarterly in arrears on (i) each March 15, June 15, September 15 and December 15 commencing June 15, 2007 (each a "***Distribution Date***"), and (ii) the Stock Purchase Date if not otherwise a Distribution Date, to the Person in whose name the Preferred HITS is registered at the close of business on the regular record date for such installment, which will be the last day of the month immediately preceding the month in which the Distribution Date falls. Distributions shall be cumulative for each Regular Distribution Date to and including the Stock Purchase Date and non-cumulative thereafter. The Trust will make Distributions on the Preferred HITS only to the extent it has received payments from the Sponsor on the Corresponding Assets. The Sponsor has the right to defer payments on the Corresponding Assets from time to time and in the event of such deferral, Distributions will also be deferred for the same period.

THE PREFERRED HITS SHALL BE REDEEMABLE AS PROVIDED IN THE DECLARATION.

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this instrument, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM: as tenants in common

UNIF GIFT MIN ACT: _____ Custodian _____ (cust)(minor) Under
Uniform Gifts to Minors Act of _____

TENANT: as tenants by the entireties

JT TEN: as joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used though not in the above list.

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto

(Please insert Social Security or Taxpayer I.D.
or other Identifying Number of Assignee)

(Please print or type name and address including Postal Zip Code of Assignee)

the within Preferred HITS Certificates and all rights thereunder, hereby irrevocably constituting and appointing attorney_____, to transfer said Preferred HITS Certificates on the books of BAC Capital Trust XIII with full power of substitution in the premises.

Dated:

Signature: _____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Preferred HITS Certificates in every particular, without alteration or enlargement or any change whatsoever.

Signature Guarantee: _____

FORM OF SPLITTING NOTICE AND REQUEST

The Bank of New York Trust Company, N.A.
as Collateral Agent and Securities Registrar
10161 Centurion Parkway, 2nd Floor
Jacksonville, Florida 32256
Attention: Corporate Trust Administration

Re: Preferred HITS of BAC Capital Trust XIII

The undersigned Holder hereby notifies you pursuant to Section 5.13(b) of the Amended and Restated Declaration of Trust, dated as of February 16, 2007, of BAC Capital Trust XIII (the "***Declaration***"), among Bank of America Corporation, as Sponsor, The Bank of New York, as Property Trustee, The Bank of New York, as Delaware Trustee, the Regular Trustees (as named therein) and the several Holders of the Trust Securities, and Section 6.02 of the Collateral Agreement, that the Holder:

(i) is depositing the appropriate Qualifying Treasury Securities with The Bank of New York Trust Company, N.A., as Collateral Agent, for deposit in the Collateral Account,

(ii) is transferring $_____ Liquidation Amount of the related Preferred HITS to the Securities Registrar in connection with an Exchange of such Preferred HITS and Qualifying Treasury Securities for a Like Amount of Treasury HITS and Corporate HITS, and

(iii) hereby requests the delivery to the Holder of such Treasury HITS and Corporate HITS.

All capitalized terms used herein that are defined in the Declaration have the meaning set forth therein. The undersigned Holder has paid all applicable fees and expenses relating to such Exchange.

Date: Signature Guarantee: _____

Please print name and address of Registered Holder:

Name: Social Security or other Taxpayer Identification Number, if any:

Address:

FORM OF NOTICE OF CONTINGENT EXCHANGE ELECTION

The Bank of New York Trust Company, N.A.
as Collateral Agent and Securities Registrar
10161 Centurion Parkway, 2nd Floor
Jacksonville, Florida 32256
Attention: Corporate Trust Administration

Re: Preferred HITS of BAC Capital Trust XIII

The undersigned Holder hereby notifies you pursuant to Section 5.14(d) of the Amended and Restated Declaration of Trust, dated as of February 16, 2007, of BAC Capital Trust XIII (the "***Declaration***"), among Bank of America Corporation, as Sponsor, The Bank of New York, as Property Trustee, The Bank of New York, as Delaware Trustee, the Regular Trustees (as named therein) and the several Holders of the Trust Securities, and Section 8.02 of the Collateral Agreement, that the Holder:

(i) is depositing the appropriate Qualifying Treasury Securities with The Bank of New York Trust Company, N.A., as Collateral Agent, for deposit in the Collateral Account,

(ii) is transferring $_____ Liquidation Amount of the related Preferred HITS to the Securities Registrar in connection with a Contingent Exchange Election of such Preferred HITS and Qualifying Treasury Securities for a Like Amount of Treasury HITS and Corporate HITS, and

(iii) hereby requests the delivery to the Holder of such Treasury HITS and Corporate HITS if the upcoming Remarketing is Successful, it being understood that if such Remarketing is not Successful, this Notice shall be disregarded and the Collateral Agent shall return such Qualifying Treasury Securities to the Holder promptly after the Remarketing.

All capitalized terms used herein that are defined in the Declaration have the meaning set forth therein. The undersigned Holder has paid all applicable fees and expenses relating to such Contingent Exchange Election.

Date: Signature Guarantee: _____

Please print name and address of Registered Holder:

Name: Social Security or other Taxpayer Identification Number, if any:

Address:

{TO BE ATTACHED TO GLOBAL CERTIFICATES}

SCHEDULE OF INCREASES AND DECREASES IN GLOBAL CERTIFICATE

The following increases or decreases in this Global Certificate have been made:

Amount of increase in Number of Preferred HITS evidenced by this Global Certificate	Amount of decrease in Number of Preferred HITS evidenced by this Global Certificate	Number of Preferred HITS evidenced by this Global Certificate following such decrease or increase	Signature of authorized signatory of Securities Registrar

Exhibit B

FORM OF TREASURY HITS CERTIFICATE

{*For inclusion in Global Certificates only* – THIS CERTIFICATE IS A GLOBAL CERTIFICATE WITHIN THE MEANING OF THE DECLARATION HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY (THE "***DEPOSITARY***") OR ITS NOMINEE. THIS CERTIFICATE IS EXCHANGEABLE FOR CERTIFICATES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE DECLARATION AND NO TRANSFER OF THIS CERTIFICATE (OTHER THAN A TRANSFER OF THIS CERTIFICATE AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY 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, IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENTAL AGENCY AND INVOLVES INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF PRINCIPAL.

No. _____ Number of Treasury HITS: _____

CUSIP No.: 05518UAB3
ISIN: US05518UAB35

BAC Capital Trust XIII

Treasury HITS

This Treasury HITS Certificate certifies that **[_____]** is the registered Holder of the number of Treasury HITS set forth above {*for inclusion in Global Certificates only* - or such other number of Treasury HITS reflected in the Schedule of Increases and Decreases in the Global Certificate attached hereto}. Each Treasury HITS represents a beneficial interest in BAC Capital Trust XIII (the "***Trust***"), having a Liquidation Amount of $1,000. The Treasury HITS 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 as provided in

Section 5.4 of the Declaration (as defined below). The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Treasury HITS are set forth in, and this certificate and the Treasury HITS represented hereby are issued and shall in all respects be subject to the terms and provisions of the Amended and Restated Declaration of Trust of the Trust, dated as of February 16, 2007, as the same may be amended and restated from time to time (the "***Declaration***"), including the designation of the terms of the Treasury HITS as set forth therein. The Holder is entitled to the benefits of the Guarantee Agreement entered into by the Sponsor and The Bank of New York, as Guarantee Trustee, dated as of February 16, 2007 (the "***Guarantee Agreement***"). All capitalized terms used herein that are defined in the Declaration have the meaning set forth therein.

Section 5.13(d) of the Declaration provides for the procedures pursuant to which Holders of Corporate HITS and Treasury HITS may exchange them for Preferred HITS and Qualifying Treasury Securities. The form of Recombination Notice and Request required to be delivered in connection therewith is printed on the reverse hereof.

A copy of each of the Declaration and the Guarantee Agreement is available for inspection at the offices of the Property Trustee.

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

IN WITNESS WHEREOF, the Trust acting through one of its Regular Trustees has executed this Treasury HITS Certificate.

BAC CAPITAL TRUST XIII, acting through one of its Regular Trustees

By: _____

Name: _____

Date: _____

CERTIFICATE OF AUTHENTICATION

This certificate represents the Treasury HITS referred to in the within-mentioned Declaration.

Dated:

THE BANK OF NEW YORK TRUST COMPANY, N.A.,
as Securities Registrar

By: _____
Authorized Signatory

Distributions payable on each Treasury HITS will be set at 0.15% per annum accruing for each Treasury HITS from the Regular Distribution Date immediately preceding its issuance, on a cumulative basis (the "***Coupon Rate***"). The Coupon Rate is payable on the stated liquidation amount of $1,000 per Treasury HITS, such rate being the rate of Contract Payments payable with respect to the Notes to be held by the Property Trustee on behalf of the Trust. In addition, additional Distributions constituting the Treasury HITS Treasury Roll Over Amount as described in the Declaration is also payable on the Treasury HITS. Distributions in arrears will bear interest thereon (to the extent permitted by applicable law) at the Coupon Rate, compounded quarterly. The amount of Distributions payable for any period will be computed on the basis of a 360-day year and the number of days actually elapsed..

Except as otherwise described below, Distributions on the Treasury HITS will be cumulative, will accrue from the date of original issuance and will be payable quarterly in arrears on (i) each March 15, June 15, September 15 and December 15 commencing the first such date on which Treasury HITS are outstanding (each a "***Distribution Date***"), and (ii) the Stock Purchase Date if not otherwise a Distribution Date (*provided*, *however*, that in any event the last Distribution Date for the Treasury HITS shall be the Stock Purchase Date), to the Person in whose name the Treasury HITS is registered at the close of business on the regular record date for such installment, which will be the last day of the month immediately preceding the month in which the Distribution Date falls. The Trust will make Distributions on the Treasury HITS only to the extent it has received payments from the Sponsor on the Corresponding Assets. The Sponsor has the right to defer payments on the Corresponding Assets from time to time and in the event of such deferral, Distributions will also be deferred for the same period.

THE TREASURY HITS SHALL BE REDEEMABLE AS PROVIDED IN THE DECLARATION.

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this instrument, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM: as tenants in common

UNIF GIFT MIN ACT: _____ Custodian _____ (cust)(minor) Under
Uniform Gifts to Minors Act of _____

TENANT: as tenants by the entireties

JT TEN: as joint tenants with right of survivorship and not as tenants in common

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto

(Please insert Social Security or Taxpayer I.D.
or other Identifying Number of Assignee)

(Please print or type name and address including Postal Zip Code of Assignee)

the within Treasury HITS Certificates and all rights thereunder, hereby irrevocably constituting and appointing attorney , to transfer said Treasury HITS Certificates on the books of BAC Capital Trust XIII, with full power of substitution in the premises.

Dated:

Signature _____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Treasury HITS Certificates in every particular, without alteration or enlargement or any change whatsoever.

Signature Guarantee: _____

FORM OF RECOMBINATION NOTICE AND REQUEST

The Bank of New York Trust Company, N.A.
as Collateral Agent and Securities Registrar
10161 Centurion Parkway, 2nd Floor
Jacksonville, Florida 32256
Attention: Corporate Trust Administration

Re: Treasury HITS and Corporate HITS of BAC Capital Trust XIII

The undersigned Holder hereby notifies you pursuant to Section 5.13(d) of the Amended and Restated Declaration of Trust, dated as of February 16, 2007, of BAC Capital Trust XIII (the "***Declaration***"), among Bank of America Corporation, as Sponsor, The Bank of New York, as Property Trustee, The Bank of New York, as Delaware Trustee, the Regular Trustees (as named therein) and the several Holders of the Trust Securities, and Section 6.03 of the Collateral Agreement, that the Holder:

(i) is transferring $ _____ Liquidation Amount of Treasury HITS and Corporate HITS in connection with an Exchange of such Treasury HITS and Corporate HITS for a Like Amount of Preferred HITS and Qualifying Treasury Securities,

(ii) hereby requests the Collateral Agent to release from the Pledge and deliver to the Holder Qualifying Treasury Securities in a principal amount equal to such Liquidation Amount, and

(iii) hereby requests the delivery to the Holder of such Preferred HITS of a Like Amount.

All capitalized terms used herein that are defined in the Declaration have the meaning set forth therein. The undersigned Holder has paid all applicable fees and expenses relating to such Exchange.

Date: Signature Guarantee: _____

Please print name and address of Registered Holder:

Name: Social Security or other Taxpayer Identification Number, if any:

Address:

{TO BE ATTACHED TO GLOBAL CERTIFICATES}

SCHEDULE OF INCREASES AND DECREASES IN GLOBAL CERTIFICATE

The following increases or decreases in this Global Certificate have been made:

Amount of increase in Number of Treasury HITS evidenced by this Global Certificate	Amount of decrease in Number of Treasury HITS evidenced by this Global Certificate	Number of Treasury HITS evidenced by this Global Certificate following such decrease or increase	Signature of authorized signatory of Securities Registrar

Exhibit C

FORM OF CORPORATE HITS CERTIFICATE

{*For inclusion in Global Certificates only* – THIS CERTIFICATE IS A GLOBAL CERTIFICATE WITHIN THE MEANING OF THE DECLARATION HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY (THE "***DEPOSITARY***") OR ITS NOMINEE. THIS CERTIFICATE IS EXCHANGEABLE FOR CERTIFICATES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE DECLARATION AND NO TRANSFER OF THIS CERTIFICATE (OTHER THAN A TRANSFER OF THIS CERTIFICATE AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY 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, IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENTAL AGENCY AND INVOLVES INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF PRINCIPAL.

No. _____ Number of Corporate HITS: _____

CUSIP No.: 05518UAC1
ISIN: US05518UAC18

BAC Capital Trust XIII

Corporate HITS

This Corporate HITS Certificate certifies that **[_____]** is the registered Holder of the number of Corporate HITS set forth above {*for inclusion in Global Certificates only* - or such other number of Corporate HITS reflected in the Schedule of Increases and Decreases in the Global Certificate attached hereto}. Each Corporate HITS represents a beneficial interest in BAC Capital Trust XIII (the "***Trust***"), having a Liquidation Amount of $1,000. The Corporate HITS

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 as provided in Section 5.4 of the Declaration (as defined below). The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Corporate HITS are set forth in, and this certificate and the Corporate HITS represented hereby are issued and shall in all respects be subject to the terms and provisions of the Amended and Restated Declaration of Trust of the Amended and Restated Declaration of Trust, dated as of February 16, 2007, as the same may be amended and restated from time to time (the "***Declaration***"), including the designation of the terms of the Preferred HITS as set forth therein. The Holder is entitled to the benefits of the Guarantee Agreement entered into by the Sponsor and The Bank of New York, as Guarantee Trustee, dated as of February 16, 2007 (the "***Guarantee Agreement***"). All capitalized terms used herein that are defined in the Declaration have the meaning set forth therein.

Section 5.13(d) of the Declaration provides for the procedures pursuant to which Holders of Corporate HITS and Treasury HITS may exchange Corporate HITS and Treasury HITS for Preferred HITS and Qualifying Treasury Securities and Section 5.14(f) of the Declaration provides for the procedures pursuant to which Holders of Corporate HITS may elect to exchange Corporate HITS in the event a Remarketing is Successful. The forms of Recombination Notice and Request and Notice of Contingent Disposition Election required to be delivered in connection therewith are printed on the reverse hereof.

A copy of each of the Declaration and the Guarantee Agreement is available for inspection at the offices of the Property Trustee.

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

IN WITNESS WHEREOF, the Trust acting through one of its Regular Trustees has executed this Corporate HITS Certificate.

BAC CAPITAL TRUST XIII, acting through one of its Regular Trustees

By: _____

Name: _____

Date: _____

CERTIFICATE OF AUTHENTICATION

This certificate represents the Corporate HITS referred to in the within-mentioned Declaration.

Dated:

THE BANK OF NEW YORK TRUST COMPANY, N.A.,
as Securities Registrar

By: _____
Authorized Signatory

Distributions payable on each Corporate HITS will be set at, (i) with respect to the period from the Closing Date to but not including the Remarketing Settlement Date for a Successful Remarketing or, in the event of a Failed Remarketing, to the Stock Purchase Date, Three-Month LIBOR plus 0.25% per annum (calculated on an Actual/360 Basis), and (ii) thereafter for so long as Corporate HITS remain outstanding, the rate per annum corresponding to interest payments by the Corporation on the Notes (the "***Coupon Rate***"). The Coupon Rate is payable on the stated liquidation amount of $1,000 per Corporate HITS, 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 will bear interest thereon (to the extent permitted by applicable law) at the Coupon Rate, compounded quarterly. The amount of Distributions payable for any period will be computed on the basis of a 360-day year and the number of days actually elapsed.

Except as otherwise described below, Distributions on the Corporate HITS will be cumulative, will accrue from the date of original issuance and will be payable quarterly in arrears on (i) each March 15, June 15, September 15 and December 15, commencing on the later of the first such date on which Corporate HITS are Outstanding and June 15, 2007 and continuing through and including the last such date to occur prior to the Remarketing Settlement Date for a Successful Remarketing, and (ii) thereafter for so long as Corporate HITS remain outstanding, each day that is an interest payment date for the Notes (each a "***Distribution Date***"), to the Person in whose name the Corporate HITS is registered at the close of business on the regular record date for such installment, which will be the last day of the month immediately preceding the month in which the Distribution Date falls. The Trust will make Distributions on the Corporate HITS only to the extent it has received payments from the Sponsor on the Corresponding Assets. The Sponsor has the right to defer payments on the Corresponding Assets from time to time and in the event of such deferral, Distributions will also be deferred for the same period.

THE CORPORATE HITS SHALL BE REDEEMABLE AS PROVIDED IN THE DECLARATION.

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this instrument, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM: as tenants in common

UNIF GIFT MIN ACT: _____ Custodian _____ (cust)(minor) Under
Uniform Gifts to Minors Act of _____

TENANT: as tenants by the entireties

JT TEN: as joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used though not in the above list.

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto

(Please insert Social Security or Taxpayer I.D.
or other Identifying Number of Assignee)

(Please print or type name and address including Postal Zip Code of Assignee)

the within Corporate HITS Certificates and all rights thereunder, hereby irrevocably constituting and appointing attorney_____, to transfer said Corporate HITS Certificates on the books of BAC Capital Trust XIII, with full power of substitution in the premises.

Dated:

Signature _____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Corporate HITS Certificates in every particular, without alteration or enlargement or any change whatsoever.

Signature Guarantee:_____

FORM OF RECOMBINATION NOTICE AND REQUEST

The Bank of New York Trust Company, N.A.
as Collateral Agent and Securities Registrar
10161 Centurion Parkway, 2nd Floor
Jacksonville, Florida 32256
Attention: Corporate Trust Administration

Re: Treasury and Corporate HITS of BAC Capital Trust XIII

The undersigned Holder hereby notifies you pursuant to Section 5.13(d) of the Amended and Restated Declaration of Trust, dated as of February 16, 2007, of BAC Capital Trust XIII (the "***Declaration***"), among Bank of America Corporation, as Sponsor, The Bank of New York, as Property Trustee, The Bank of New York, as Delaware Trustee, the Regular Trustees (as named therein) and the several Holders of the Trust Securities, and Section 6.03(a) of the Collateral Agreement, that the Holder:

(i) is transferring $_____ Liquidation Amount of Treasury HITS and Corporate HITS in connection with an Exchange of such Treasury HITS and Corporate HITS for a Like Amount of Preferred HITS and Qualifying Treasury Securities,

(ii) hereby requests the Collateral Agent to release from the Pledge and deliver to the Holder Qualifying Treasury Securities in a principal amount equal to such Liquidation Amount, and

(iii) hereby requests the delivery to the Holder of such Preferred HITS of a Like Amount.

All capitalized terms used herein that are defined in the Declaration have the meaning set forth therein. The undersigned Holder has paid all applicable fees and expenses relating to such Exchange.

Date: Signature Guarantee: _____

Please print name and address of Registered Holder:

Name: Social Security or other Taxpayer Identification Number, if any:

Address:

FORM OF NOTICE OF CONTINGENT DISPOSITION ELECTION

The Bank of New York Trust Company, N.A.
as Collateral Agent and Securities Registrar
10161 Centurion Parkway, 2nd Floor
Jacksonville, Florida 32256
Attention: Corporate Trust Administration

Re: Corporate HITS of BAC Capital Trust XIII

The undersigned Holder hereby notifies you pursuant to Section 5.14(f) of the Amended and Restated Declaration of Trust, dated as of February 16, 2007, of BAC Capital Trust XIII (the "***Declaration***"), among Bank of America Corporation, as Sponsor, The Bank of New York, as Property Trustee, The Bank of New York, as Delaware Trustee, the Regular Trustees (as named therein) and the several Holders of the Trust Securities, and Section 8.03 of the Collateral Agreement, that the Holder:

(i) is transferring $ _____ Corporate HITS to the Securities Registrar, and

(ii) hereby requests the payment to the Holder, if the upcoming Remarketing is Successful, of an amount in cash for each such Corporate HITS equal to the proceeds of the sale of $1,000 principal amount of Notes, it being understood that if such Remarketing is not Successful, this Notice shall be disregarded.

All capitalized terms used herein that are defined in the Declaration have the meaning set forth therein. The undersigned Holder has paid all applicable fees and expenses relating to such Contingent Disposition Election.

Date: Signature Guarantee: _____

Please print name and address of Registered Holder:

Name: Social Security or other Taxpayer Identification Number, if any:

Address:

{TO BE ATTACHED TO GLOBAL CERTIFICATES}

SCHEDULE OF INCREASES AND DECREASES IN GLOBAL CERTIFICATE

The following increases or decreases in this Global Certificate have been made:

Amount of increase in Number of Corporate HITS evidenced by this Global Certificate	Amount of decrease in Number of Corporate HITS evidenced by this Global Certificate	Number of Corporate HITS evidenced by this Global Certificate following such decrease or increase	Signature of authorized signatory of Securities Registrar

Schedule I

Reference Dealers

Banc of America Securities LLC
Bear Stearns & Co. Inc.
Deutsche Bank
UBS AG

Schedule II

Contact Persons for Confirmation

Name	Phone Number
Richard Nichols	(704) 386-9015
Ann Travis	(704) 386-7796
Ken Burton	(704) 387-3776
Darrin B. McCaskill	(704) 387-5078
Susan H. McCarver	(704) 387-0558
Tina Gonzalez	(904) 998-4732

Exhibit 10.2

COLLATERAL AGREEMENT

among

BANK OF AMERICA CORPORATION,

THE BANK OF NEW YORK TRUST COMPANY, N.A.,

as Collateral Agent, Custodial Agent,

Securities Intermediary and Securities Registrar,

and

BAC CAPITAL TRUST XIV,

acting through The Bank of New York,

as Property Trustee

February 16, 2007

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SCHEDULES

Schedule I – Reference Dealers

Schedule II – Contact Persons for Confirmation

COLLATERAL AGREEMENT, dated as of February 16, 2007, among **BANK OF AMERICA CORPORATION**, a Delaware corporation (the "***Corporation***"), **THE BANK OF NEW YORK TRUST COMPANY, N.A.** ("***The Bank of New York Trust Company***"), as collateral agent (in such capacity, the "***Collateral Agent***"), as Custodial Agent (in such capacity, the "***Custodial Agent***"), as securities intermediary (as defined in Section 8-102(a)(14) of the UCC) with respect to the Collateral Account (as defined herein) (in such capacity, the "***Securities Intermediary***"), and as securities registrar with respect to the HITS (in such capacity, the "***Securities Registrar***"), and **BAC CAPITAL TRUST XIV**, a Delaware statutory trust (the "***Trust***"), acting through **THE BANK OF NEW YORK**, not in its individual capacity but solely as Property Trustee on behalf of the Trust (in such capacity, the "***Property Trustee***").

RECITALS

The Corporation and the Trust (acting through the Property Trustee) are parties to the Stock Purchase Contract Agreement, dated as of the date hereof (as modified and supplemented and in effect from time to time, the "***Stock Purchase Contract Agreement***"), pursuant to which the Corporation has agreed to issue stock purchase contracts, having a stated amount of $100,000 per contract (each, a "***Stock Purchase Contract***") to the Trust.

Each Stock Purchase Contract requires the Corporation to issue and sell, and the Property Trustee (on behalf of the Trust) to purchase, on the Stock Purchase Date (as defined in the Stock Purchase Contract Agreement), for an amount equal to $100,000 (the "***Purchase Price***"), one share of the Corporation's Adjustable Rate Non-Cumulative Preferred Stock, Series G, $100,000 liquidation preference per share (the "***Preferred Stock***").

Pursuant to the Declaration, the Stock Purchase Contract Agreement and the Stock Purchase Contracts, the Trust acting through the Property Trustee is required to execute and deliver this Agreement, to grant the pledge provided herein of the Collateral to secure the Obligations (as defined herein) and to appoint the Custodial Agent to establish and maintain the Custody Account (as defined herein).

NOW, THEREFORE, THIS COLLATERAL AGREEMENT WITNESSETH: For and in consideration of the agreements and obligations set forth herein and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Corporation, the Collateral Agent, the Custodial Agent, the Securities Intermediary, the Securities Registrar and the Trust mutually agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 *Definitions*.

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular, and nouns and pronouns of the masculine gender include the feminine and neuter genders.

(b) The words "*herein*", "*hereof*" and "*hereunder*" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision and references to any Article, Section or other subdivision are references to an Article, Section or other subdivision of this Agreement.

(c) The following terms that are defined in the UCC shall have the meanings set forth therein: "*certificated security*", "*control*", "*financial asset*", "*financing statement*", "*entitlement order*", "*securities account*", "*security entitlement*" and "*funds-transfer system*".

(d) Capitalized terms used herein and not defined herein have the meanings assigned to them in the Declaration.

(e) The following terms have the meanings given to them in this Section 1.01(e):

"***Additional Distribution Date***" has the meaning specified in the Declaration.

"***Address for Notices***" has the meaning specified in Section 12.03.

"***Agreement***" means this Collateral Agreement, as the same may be amended, modified or supplemented from time to time.

"***Bank of America Deposit***" has the meaning specified in the Stock Purchase Contract Agreement.

"***Book-Entry HITS***" has the meaning specified in the Declaration.

"***Book-Entry HITS Certificates***" has the meaning specified in the Declaration.

"***Cash***" means any coin or currency of the United States as at the time shall be legal tender for payment of public and private debts.

"***Collateral***" means the collective reference to:

(1) the Collateral Account and all investment property and other financial assets from time to time credited to the Collateral Account and all security entitlements with respect thereto, including, without limitation, (A) the Notes, other than any Notes that are Transferred to (x) the Custodial Agent in accordance with Section 6.02 upon the Exchange of Preferred HITS and Qualifying Treasury Securities for Treasury HITS and Corporate HITS pursuant to Sections 5.13(a)(i), (b) and (c) of the Declaration from time to time or (y) the Remarketing Agent or the Custody Account in accordance with Section 8.02(b) upon a Successful Remarketing and (B) any Qualifying Treasury Securities and security entitlements thereto delivered from time to time upon the exchange of Preferred HITS and Qualifying Treasury Securities for Treasury HITS and Corporate HITS pursuant to Sections 5.13(a)(i), (b) and (c) of the Declaration and in accordance with Section 6.02;

(2) all Qualifying Treasury Securities and security entitlements thereto purchased by the Collateral Agent with the Proceeds of Qualifying Treasury Securities pursuant to Section 6.05;

(3) the Bank of America Deposit;

(4) all Proceeds of any of the foregoing (whether such Proceeds arise before or after the commencement of any proceeding under any applicable bankruptcy, insolvency or other similar law, by or against the Trust, as pledgor or with respect to the pledgor); and

(5) all powers and rights now owned or hereafter acquired under or with respect to the Collateral.

"***Collateral Account***" means the securities account of The Bank of New York Trust Company, as Collateral Agent, maintained by the Securities Intermediary and designated "The Bank of New York Trust Company, as Collateral Agent of Bank of America Corporation, as pledgee of BAC Capital Trust XIV, acting through The Bank of New York, as Property Trustee".

"***Collateral Agent***" means the Person named as the "Collateral Agent" in the first paragraph of this Agreement until a successor Collateral Agent shall have become such pursuant to the applicable provisions of this Agreement, and thereafter "Collateral Agent" shall mean such Person or any subsequent successor who is appointed pursuant to this Agreement.

"***Corporation***" means the Person named as the "Corporation" in the first paragraph of this Agreement until a successor shall have become such pursuant to the applicable provisions of the Stock Purchase Contract Agreement, and thereafter "Corporation" shall mean such successor.

"***Custodial Agent***" means the Person named as the "Custodial Agent" in the first paragraph of this Agreement until a successor Custodial Agent shall have become such pursuant to the applicable provisions of this Agreement, and thereafter "Custodial Agent" shall mean such Person or any subsequent successor who is appointed pursuant to this Agreement.

"***Custody Account***" means the securities account of The Bank of New York Trust Company, as Custodial Agent, designated "The Bank of New York Trust Company as Custodial Agent for BAC Capital Trust XIV".

"***Custody Notes***" has the meaning specified in Section 4.01.

"***Declaration***" means the Amended and Restated Declaration of Trust, dated as of the date hereof, among the Corporation, as Sponsor, the Property Trustee, the Delaware Trustee and the Regular Trustees (each as named therein), and the several Holders (as defined therein).

"***Definitive HITS Certificates***" has the meaning specified in the Declaration.

"***Exchange***" means an exchange of Preferred HITS and Qualifying Treasury Securities for Treasury HITS and Corporate HITS pursuant to Section 5.13(b) of the Declaration and Section 6.02 or an exchange of Treasury HITS and Corporate HITS for Preferred HITS and Qualifying Treasury Securities pursuant to Section 5.13(d) of the Declaration and Section 6.03.

"***Exchange Period***" has the meaning specified in the Declaration.

"***Final Dealer***" has the meaning specified in Section 6.05(a).

"***HITS***" has the meaning specified in the Declaration.

"***Indemnitees***" has the meaning specified in Section 10.08(b).

"***Like Amount***" has the meaning specified in the Declaration.

"***Loss***" (and collectively, "***Losses***") has the meaning specified in Section 10.08(b).

"***Market Disruption Event***" has the meaning specified in the Supplemental Indenture.

"***Notes***" means the Remarketable Floating Rate Junior Subordinated Notes due 2043 of the Corporation issued pursuant to the Supplemental Indenture.

"***Notice of Contingent Disposition Election***" means a Notice of Contingent Disposition Election substantially in the form set forth on the reverse side of the form of Corporate HITS Certificate, a copy of which is attached hereto as Exhibit C.

"***Notice of Contingent Exchange Election***" means a Notice of Contingent Exchange Election substantially in the form set forth on the reverse side of the form of Preferred HITS Certificate, a copy of which is attached hereto as Exhibit A.

"***Obligations***" means all obligations and liabilities of the Trust and the Property Trustee on behalf of the Trust under each Stock Purchase Contract, the Stock Purchase Contract Agreement and this Agreement or any other document made, delivered or given in connection herewith or therewith, in each case whether on account of principal, interest (including, without limitation, interest accruing before and after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Property Trustee or the Trust, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), fees, indemnities, costs, expenses or otherwise (including, without limitation, all fees and disbursements of counsel to the Corporation or the Collateral Agent or the Securities Intermediary that are required to be paid by the Trust pursuant to the terms of any of the foregoing agreements).

"***Payment Account***" has the meaning specified in the Declaration.

"***Permitted Investments***" means any one of the following, in each case maturing on the Business Day following the date such investment is made:

(1) any evidence of indebtedness with an original maturity of 365 days or less issued, or directly and fully guaranteed or insured, by the United States of America or any agency or instrumentality thereof (provided that the full faith and credit of the United States of America is pledged in support of the timely payment thereof or such indebtedness constitutes a general obligation of it);

(2) deposits, certificates of deposit or acceptances with an original maturity of 365 days or less of any institution which is a member of the Federal Reserve System having combined capital and surplus and undivided profits of not less than $500 million at the time of deposit (and which may include the Collateral Agent);

(3) investments with an original maturity of 365 days or less of any Person that are fully and unconditionally guaranteed by a bank referred to in clause (2);

(4) repurchase agreements and reverse repurchase agreements relating to marketable direct obligations issued or unconditionally guaranteed by the United States of America or issued by any agency thereof and backed as to timely payment by the full faith and credit of the United States of America;

(5) investments in commercial paper, other than commercial paper issued by the Corporation or its Affiliates, of any corporation incorporated under the laws of the United States of America or any State thereof, which commercial paper has a rating at the time of purchase at least equal to "A-1" by Standard & Poor's Ratings Services ("***S&P***") or at least equal to "P-1" by Moody's Investors Service, Inc. ("***Moody's***"); and

(6) investments in money market funds (including, but not limited to, money market funds managed by the Collateral Agent or an Affiliate of the Collateral Agent) registered under the Investment Company Act of 1940, as amended, rated in the highest applicable rating category by S&P or Moody's.

"***Pledge***" means the lien and security interest created by this Agreement.

"***Pledged Notes***" means each Note deposited with the Collateral Agent pursuant to Section 6.01 or delivered to the Collateral Agent pursuant to Section 6.03, until such time as it is released from the Pledge and delivered to the Custodial Agent pursuant to Section 6.02 or to the Remarketing Agent or the Custody Account pursuant to Section 8.02(b).

"***Pledged Treasury Securities***" means Qualifying Treasury Securities from time to time credited to the Collateral Account pursuant to Section 6.02 and not then released from the Pledge pursuant to Section 6.03, together with all Qualifying Treasury Securities purchased from time to time by the Collateral Agent with the Proceeds of maturing Pledged Treasury Securities pursuant to Section 6.05.

"***Preferred Stock***" has the meaning specified in the Recitals of this Agreement.

"***Proceeds***" has the meaning ascribed thereto in Section 9-102(a)(64) of the UCC and includes, without limitation, all interest, dividends, Cash, instruments, securities, financial assets and other property received, receivable or otherwise distributed upon the sale (including, without limitation, the Remarketing), exchange, collection or disposition of any financial assets from time to time held in the Collateral Account.

"***Property Trustee***" means the Person named as the "Property Trustee" in the first paragraph of this Agreement until a successor Property Trustee shall have become such pursuant to the applicable provisions of the Declaration, and thereafter "Property Trustee" shall mean such Person or any subsequent successor who is appointed pursuant to the Declaration.

"***Purchase Price***" has the meaning specified in the Recitals of this Agreement.

"***Qualifying Treasury Securities***" has the meaning specified in the Declaration.

"***Recombination Notice and Request***" means a Recombination Notice and Request substantially in the form set forth on the reverse side of the forms of Treasury HITS Certificate and Corporate HITS Certificate, copies of which are attached hereto as Exhibits B and C respectively.

"***Reference Dealer***" means each of the U.S. government securities dealers listed on Schedule I hereto (including any successor thereto) and any other U.S. government securities dealers designated by the Collateral Agent (it being understood that the Collateral Agent may, but shall not be obligated, to designate any one or more such other U.S. government securities dealers); provided that if at any time fewer than three of the entities named on Schedule I are active U.S. government securities dealers and approved counterparties of The Bank of New York Trust Company, any of the Regular Trustees may designate an additional U.S. government securities dealer as a Reference Dealer.

"***Regular Trustee***" has the meaning specified in the Declaration.

"***Remarketing***" has the meaning specified in the Supplemental Indenture.

"***Roll Date***" means, with respect to any Additional Distribution Date, the latest date prior to such Additional Distribution Date that is a maturity date of Qualifying Treasury Securities held in the Collateral Account.

"***Securities Intermediary***" means the Person named as the "Securities Intermediary" in the first paragraph of this Agreement until a successor Securities

Intermediary shall have become such pursuant to the applicable provisions of this Agreement, and thereafter "Securities Intermediary" shall mean such Person or any subsequent successor who is appointed pursuant to this Agreement.

"***Securities Registrar***" means the Person named as the "Securities Registrar" in the first paragraph of this Agreement until a successor Securities Registrar shall have been appointed by the Corporation pursuant to the applicable provisions of the Declaration, and thereafter "Securities Registrar" shall mean such Person or any subsequent successor who is appointed pursuant to the Declaration by the Corporation.

"***Stock Purchase Contract***" has the meaning specified in the Recitals of this Agreement.

"***Stock Purchase Contract Agreement***" has the meaning specified in the Recitals of this Agreement.

"***Splitting Notice and Request***" means a Splitting Notice and Request substantially in the form set forth on the reverse side of the form of Preferred HITS Certificate, a copy of which is attached hereto as Exhibit A.

"***Successful***" has the meaning specified in the Supplemental Indenture.

"***Supplemental Indenture***" means the Fourteenth Supplemental Indenture to the Base Indenture (as defined in the Declaration), dated as of February 16, 2007, between Bank of America Corporation and The Bank of New York Trust Company, N.A.

"***Termination Event***" has the meaning specified in the Stock Purchase Contract Agreement.

"***The Bank of New York Trust Company***" has the meaning specified in the first paragraph of this Agreement.

"***Trade Date***" means, with respect to each Roll Date, the Business Day immediately preceding such Roll Date.

"***Trades***" means the Treasury/Reserve Automated Debt Entry System maintained by the Federal Reserve Bank of New York pursuant to the Trades Regulations.

"***Trades Regulations***" means the regulations of the United States Department of the Treasury, published at 31 C.F.R. Part 357, as amended from time to time. Unless otherwise defined herein, all terms defined in the Trades Regulations are used herein as therein defined.

"***Transfer***" means (i) in the case of certificated securities in registered form, delivery as provided in Section 8-301(a) of the UCC, endorsed to the transferee or in blank by an effective endorsement, (ii) in the case of Qualifying Treasury Securities, registration of the transferee as the owner of such Qualifying Treasury Securities on Trades and (iii) in the case of security entitlements, including, without limitation, security

entitlements with respect to Qualifying Treasury Securities, a securities intermediary indicating by book entry that such security entitlement has been credited to the transferee's securities account.

"***Trust***" has the meaning specified in the first paragraph of this Agreement.

"***Trust Preferred Securities***" has the meaning specified in the Declaration

"***UCC***" means the Uniform Commercial Code as in effect in the State of New York from time to time.

"***Value***" means, with respect to any item of Collateral on any date, as to (1) Cash, the face amount thereof, (2) Notes, the aggregate principal amount thereof and (3) Qualifying Treasury Securities, the aggregate principal amount thereof.

ARTICLE II

PLEDGE

Section 2.01 *Pledge*.

Pursuant to Section 2.6 of the Declaration, the Trust (acting through the Property Trustee) hereby pledges and grants to the Collateral Agent, as agent of and for the benefit of the Corporation, a continuing first priority security interest in and to, and a lien upon and right of set-off against, all of such Person's right, title and interest in and to the Collateral to secure the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the Obligations. The Collateral Agent shall have all of the rights, remedies and recourses with respect to the Collateral afforded a secured party by the UCC, in addition to, and not in limitation of, the other rights, remedies and recourses afforded to the Collateral Agent by this Agreement.

Section 2.02 *Control.*

The Collateral Agent shall have control of the Collateral Account pursuant to the provisions of Article III.

Section 2.03 *Termination*.

This Agreement and the Pledge created hereby shall terminate upon the satisfaction of the Obligations. Upon receipt by the Collateral Agent from the Corporation of notice of such termination, the Collateral Agent shall, except as otherwise provided herein, Transfer and instruct the Securities Intermediary to Transfer the Collateral to or upon the order of the Property Trustee, free and clear of the Pledge created hereby.

ARTICLE III

CONTROL

Section 3.01 *Establishment of Collateral Account.*

The Securities Intermediary hereby confirms that:

(a) the Securities Intermediary has established the Collateral Account;

(b) the Collateral Account is a securities account;

(c) subject to the terms of this Agreement, the Securities Intermediary shall identify in its records the Collateral Agent as the entitlement holder entitled to exercise the rights that comprise any financial asset credited to the Collateral Account;

(d) all property delivered to the Securities Intermediary pursuant to this Agreement or the Stock Purchase Contract Agreement, including any Permitted Investments purchased by the Securities Intermediary from the Proceeds of any Collateral, will be credited promptly to the Collateral Account; and

(e) all securities or other property underlying any financial assets credited to the Collateral Account shall be (i) registered in the name of the Property Trustee and indorsed to the Securities Intermediary or in blank, (ii) registered in the name of the Securities Intermediary or the Collateral Agent or (iii) credited to another securities account maintained in the name of the Securities Intermediary. In no case will any financial asset credited to the Collateral Account be registered in the name of the Property Trustee or specially indorsed to the Property Trustee unless such financial asset has been further indorsed to the Securities Intermediary or in blank.

Section 3.02 *Treatment as Financial Assets.*

Each item of property (whether investment property, financial asset, security, instrument or Cash) credited to the Collateral Account shall be treated as a financial asset.

Section 3.03 *Sole Control by Collateral Agent*

Except as provided in Section 8.01, at all times prior to the termination of the Pledge, the Collateral Agent shall have sole control of the Collateral Account, and the Securities Intermediary shall take instructions and directions with respect to the Collateral Account solely from the Collateral Agent. If at any time the Securities Intermediary shall receive an entitlement order issued by the Collateral Agent and relating to the Collateral Account, the Securities Intermediary shall comply with such entitlement order without further consent by the Property Trustee or any other Person. Except as otherwise permitted under this Agreement, until termination of the Pledge, the Securities Intermediary will not comply with any entitlement orders issued by the Property Trustee.

The Trust hereby irrevocably constitutes and appoints the Collateral Agent and the Corporation, with full power of substitution, as the Trust's attorney-in-fact to take on behalf of,

and in the name, place and stead of the Trust and the Holders, any action necessary or desirable to perfect and to keep perfected the security interest in the Collateral referred to in Section 2.01. The grant of such power-of-attorney shall not be deemed to require of the Collateral Agent any specific duties or obligations not otherwise expressly assumed by the Collateral Agent hereunder. Notwithstanding the foregoing, in no event shall the Collateral Agent or Securities Intermediary be responsible for the preparation or filing of any financing or continuation statements or responsible for maintenance or perfection of any security interest hereunder.

Section 3.04 *Securities Intermediary's Location.*

The Collateral Account, and the rights and obligations of the Securities Intermediary, the Collateral Agent and the Property Trustee with respect thereto, shall be governed by the laws of the State of New York. Regardless of any provision in any other agreement, for purposes of the UCC, New York shall be deemed to be the Securities Intermediary's jurisdiction.

Section 3.05 *No Other Claims.*

Except for the claims and interest of the Collateral Agent and of the Trust in the Collateral Account, the Securities Intermediary (without having conducted any investigation) does not know of any claim to, or interest in, the Collateral Account or in any financial asset credited thereto. If any Person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against the Collateral Account or in any financial asset carried therein, the Securities Intermediary will promptly notify the Collateral Agent and the Property Trustee.

Section 3.06 *Investment and Release.*

All Proceeds of financial assets from time to time deposited in the Collateral Account shall be invested and reinvested as provided in this Agreement. At no time prior to termination of the Pledge with respect to any particular property shall such property be released from the Collateral Account except in accordance with this Agreement or upon written instructions of the Collateral Agent.

Section 3.07 *No Other Agreements.*

The Securities Intermediary has not entered into, and prior to the termination of the Pledge will not enter into, any agreement with any other Person relating to the Collateral Account or any financial assets credited thereto, including, without limitation, any agreement to comply with entitlement orders of any Person other than the Collateral Agent.

Section 3.08 *Powers Coupled with an Interest.*

The rights and powers granted in this Article III to the Collateral Agent have been granted in order to perfect its security interests in the Collateral Account, are powers coupled with an interest and will be affected neither by the bankruptcy of the Property Trustee or the Trust nor by the lapse of time. The obligations of the Securities Intermediary under this Article III shall continue in effect until the termination of the Pledge with respect to any and all Collateral.

Section 3.09 *Waiver of Lien; Waiver of Set-off.*

The Securities Intermediary waives any security interest, lien or right to make deductions or set-offs that it may now have or hereafter acquire in or with respect to the Collateral Account, any financial asset credited thereto or any security entitlement in respect thereof. Neither the financial assets credited to the Collateral Account nor the security entitlements in respect thereof will be subject to deduction, set-off, banker's lien or any other right in favor of any person other than the Corporation.

ARTICLE IV

CUSTODY

Section 4.01 *Appointment.*

The Trust hereby appoints the Custodial Agent as Custodial Agent of the Trust to hold all of the Notes that are property of the Trust, other than the Pledged Notes (collectively, the "***Custody Notes***"), for the benefit of the Trust and for the purposes set forth herein, and the Custodial Agent hereby accepts such appointment under the terms and conditions set forth herein.

Section 4.02 *Custody*.

The Custodial Agent will hold the Custody Notes in the Custody Account. For the avoidance of doubt, the Custodial Agent shall segregate on its books and records the assets of the Trust from assets held by the Custodial Agent for other customers (including the Collateral) or for the Custodial Agent itself. The Custodial Agent shall only have the obligations expressly set forth herein and shall have no responsibility for monitoring compliance with the Declaration, the Stock Purchase Agreement or any other agreement in connection therewith. The Custodial Agent shall accept the Transfer of Notes from the Collateral Agent from time to time pursuant to Section 6.02, deliver Notes to the Collateral Agent from time to time pursuant to Section 6.03 and deliver Notes to the Remarketing Agent on the Remarketing Settlement Date pursuant to Section 8.03.

Section 4.03 *Termination of Custody Account.*

Upon receipt by the Custodial Agent from the Corporation of notice of termination of this Agreement pursuant to Section 2.03, the Custodial Agent shall deliver the Custody Notes to the Property Trustee.

Section 4.04 *Waiver of Lien; Waiver of Set-off.*

The Custodial Agent waives any security interest, lien or right to make deductions or set-offs that it may now have or hereafter acquire in or with respect to the Custody Account, any financial asset credited thereto or any security entitlement in respect thereof. Neither the financial assets credited to the Custody Account nor the security entitlements in respect thereof will be subject to deduction, set-off, banker's lien or any other right in favor of any Person other than the Trust.

ARTICLE V

DISTRIBUTIONS ON COLLATERAL AND CUSTODY NOTES

Section 5.01 *Interest on Notes*.

(a) The Collateral Agent shall transfer all interest received from time to time by the Collateral Agent on account of the Pledged Notes to the Paying Agent.

(b) The Custodial Agent shall transfer all interest received from time to time by the Custodial Agent on account of the Custody Notes to the Paying Agent.

Section 5.02 *Payments Following Termination Event.*

Following a Termination Event, written notice of which the Collateral Agent or the Custodial Agent, as the case may be, shall have received from the Corporation, the Property Trustee or any of the Regular Trustees,

(a) the Collateral Agent shall cause the Securities Intermediary to Transfer (i) the Pledged Notes, (ii) the Pledged Treasury Securities and (iii) any Permitted Investments, including in each case any and all payments of principal or interest it receives in respect thereof, to the Property Trustee or its designee, free and clear of the Pledge created hereby; and

(b) the Custodial Agent shall Transfer the Custody Notes and any and all payments of principal or interest it receives in respect thereof to the Property Trustee or its designee.

Section 5.03 *Payments Prior to or on Stock Purchase Date.*

(a) Except as provided in Section 5.03(c) and Section 6.05, if the Collateral Agent or the Custodial Agent, as the case may be, shall not have received from the Corporation, the Property Trustee or any of the Regular Trustees notice of any Termination Event, all payments of principal received by the Collateral Agent or the Securities Intermediary in respect of (i) the Pledged Notes and (ii) the Pledged Treasury Securities shall be held until the Stock Purchase Date and an amount thereof equal to the Purchase Price under the Stock Purchase Contracts shall be transferred to the Corporation on the Stock Purchase Date as provided in Section 2.2 of the Stock Purchase Contract Agreement in satisfaction of the Trust's obligation to pay such Purchase Price. Any balance remaining in the Collateral Account shall be released from the Pledge and Transferred to the Paying Agent, free and clear of the Pledge created thereby. The Corporation shall instruct the Collateral Agent in writing as to the Permitted Investments in which any payments received under this Section 5.03(a) (which, for purpose of confirmation, includes the excess Proceeds received under Section 6.05(b)) shall be invested; provided that if the Corporation fails to deliver such instructions by 10:30 A.M. (New York City time) on the day such payments are received by the Collateral Agent, the Collateral Agent shall invest such payments in the Permitted Investments as described in clause (6) of the definition of Permitted Investments. The Collateral Agent shall have no liability in respect of losses incurred as a result of the failure of the Corporation to provide timely written investment direction. The Collateral Agent may conclusively rely on any written direction and shall bear no liability for any loss or

other damage based on acting or omitting to act under this Section 5.03 (which, for purpose of confirmation, includes acting or omitting to act under Section 6.05(b) in respect of excess Proceeds referred to therein) pursuant to any direction of the Corporation or any investment in Permitted Investments as described in clause (6) of the definition of Permitted Investments as provided herein and neither the Collateral Agent nor the Securities Intermediary shall in any way be liable for the selection of Permitted Investments or by reason of any insufficiency in the Collateral Account resulting from any loss on any Permitted Investment included therein.

(b) All payments of principal received by the Custodial Agent in respect of the Custody Notes shall be transferred to the Paying Agent.

(c) All payments of principal received by the Collateral Agent or the Securities Intermediary in respect of (i) the Pledged Notes and (ii) the Pledged Treasury Securities or security entitlements thereto, that, in each case, have been released from the Pledge pursuant hereto (other than Pledged Notes that upon such release shall have become Custody Notes in accordance with Section 6.03) shall be transferred to or in accordance with the written instructions of the Paying Agent.

Section 5.04 *Payments to Property Trustee.*

The Securities Intermediary and the Custodial Agent shall use commercially reasonable efforts to deliver payments to the Paying Agent or the Property Trustee as provided hereunder to the following account established by the Paying Agent or the Property Trustee, for credit to The Bank of New York, ABA# 021000018, A/C# GLA 111-565, for further credit to 155406, Ref: BAC Capital Trust XIV, Attn: Tina Gonzalez, not later than 12:00 P.M. (New York City time) on the Business Day it receives such payment; provided that if such payment is required to be made on a day that is not a Business Day or after 11:00 A.M. (New York City time) on a Business Day, then it shall use commercially reasonable efforts to deliver such payment to the Paying Agent or the Property Trustee no later than 10:30 A.M. (New York City time) on the next succeeding Business Day.

Section 5.05 *Assets Not Properly Released.*

If the Paying Agent or the Property Trustee shall receive any principal payments on account of financial assets credited to the Collateral Account and not released therefrom in accordance with this Agreement, the Paying Agent or the Property Trustee shall hold the same as trustee of an express trust for the benefit of the Corporation and, upon receipt of an Officers' Certificate of the Corporation so directing, promptly deliver the same to the Securities Intermediary for credit to the Collateral Account or to the Corporation for application to the Obligations, and the Paying Agent or the Property Trustee shall acquire no right, title or interest in any such payments of principal amounts so received. Neither the Paying Agent nor the Property Trustee shall have any liability under this Section 5.05 unless and until it has been notified in writing that such payment was delivered to it erroneously and nor shall it have any liability for any action taken, suffered or omitted to be taken prior to its receipt of such notice.

ARTICLE VI

INITIAL DEPOSIT; EXCHANGE OF PREFERRED HITS AND QUALIFYING TREASURY SECURITIES FOR TREASURY HITS AND CORPORATE HITS; REINVESTMENT OF PROCEEDS OF PLEDGED TREASURY SECURITIES

Section 6.01 *Initial Deposit of Notes.*

(a) Prior to or concurrently with the execution and delivery of this Agreement, the Property Trustee shall Transfer to the Securities Intermediary, for credit to the Collateral Account, Notes having an aggregate principal amount of Eight Hundred Fifty Million Dollars ($850,000,000).

(b) The Collateral Agent shall, at any time or from time to time, at the written request of the Corporation, cause any or all securities or other property underlying any financial assets credited to the Collateral Account to be registered in the name of the Securities Intermediary, the Collateral Agent or their respective nominees; provided that unless any Event of Default (as defined in the Declaration) shall have occurred and be continuing, and in respect of which the Collateral Agent shall have received written notice from the Property Trustee or the Regular Trustees, the Collateral Agent agrees not to cause any Notes to be so re-registered.

Section 6.02 *Exchange of Preferred HITS and Qualifying Treasury Securities for Treasury HITS and Corporate HITS*

(a) On each occasion on which a Holder of Preferred HITS exercises its rights pursuant to Sections 5.13(a)(i), (b) and (c) of the Declaration to exchange Preferred HITS and Qualifying Treasury Securities for Treasury HITS and Corporate HITS by, during any Exchange Period:

(i) depositing with the Collateral Agent the treasury security that is the Qualifying Treasury Security on the date of deposit, in the principal amount of $1,000 for each Preferred HITS being Exchanged;

(ii) Transferring the Preferred HITS being Exchanged to the Securities Registrar; and

(iii) delivering a duly executed and completed Splitting Notice and Request to the Securities Registrar and Collateral Agent (x) stating that the Holder has deposited the appropriate Qualifying Treasury Securities with the Collateral Agent for deposit in the Collateral Account, (y) stating that the Holder is Transferring the related Preferred HITS to the Securities Registrar in connection with an Exchange of such Preferred HITS and Qualifying Treasury Securities for a Like Amount of Treasury HITS and Corporate HITS, and (z) requesting the delivery to the Holder of such Treasury HITS and Corporate HITS,

the Collateral Agent shall, upon the deposit and Transfer pursuant to clauses (i) and (ii) and receipt of the notice and request referred to in clause (iii), (w) be deemed to accept the

Qualifying Treasury Securities deposited pursuant to clause (i) as Collateral subject to the Pledge, (x) release Pledged Notes of a Like Amount from the Pledge, (y) Transfer such Pledged Notes to the Custodial Account free and clear of the Corporation's security interest therein, and (z) confirm to the Property Trustee in writing that such release and Transfer has occurred. The Custodial Agent shall continue to hold such Notes as Custody Notes pursuant to Article IV.

(b) The Securities Registrar, pursuant to the procedures provided for in Section 5.11 of the Declaration dealing with increasing and decreasing the number of Trust Preferred Securities evidenced by Book-Entry HITS Certificates, shall cancel the number of Preferred HITS Transferred pursuant to Section 6.02(a) and deliver a Like Amount of Treasury HITS and Corporate HITS to the Holder, all by making appropriate notations on the Book-Entry HITS Certificates of the appropriate Class.

(c) The substitution of Qualifying Treasury Securities, or security entitlements thereto, for financial assets held in the Collateral Account pursuant to this Section 6.02, shall not constitute a novation of the security interest created hereby.

Section 6.03 *Exchange of Treasury HITS and Corporate HITS for Preferred HITS and Qualifying Treasury Securities*

(a) On each occasion on which a Holder of Treasury HITS and Corporate HITS exercises its rights pursuant to Section 5.13(d) of the Declaration to exchange Treasury HITS and Corporate HITS for Preferred HITS and Qualifying Treasury Securities by, during any Exchange Period, Transferring the Treasury HITS and the Corporate HITS being Exchanged to the Securities Registrar and delivering a duly executed and completed Recombination Notice and Request to the Securities Registrar and Collateral Agent (x) stating that the Holder is Transferring the related Treasury HITS and Corporate HITS to the Securities Registrar in connection with the Exchange of such Treasury HITS and Corporate HITS for a Like Amount of each of Preferred HITS and Qualifying Treasury Securities, (y) requesting the Collateral Agent to release from the Pledge and deliver to the Holder Pledged Treasury Securities in a principal amount equal to the Liquidation Amount of the Treasury HITS and Corporate HITS being exchanged, and (z) requesting the Securities Registrar to deliver to the Holder Preferred HITS of a Like Amount, then, upon the Transfer and receipt of the notice and request referred to in this Section 6.03(a), (i) the Custodial Agent will Transfer a Like Amount of Notes from the Custody Account to the Collateral Account in substitution for such Pledged Treasury Securities, (ii) the Collateral Agent will be deemed to accept the Notes Transferred by the Custodial Agent pursuant to clause (i) as Collateral subject to the Pledge, (iii) the Collateral Agent will release Pledged Treasury Securities of a Like Amount from the Pledge and deliver such Qualifying Treasury Securities to the Holder free and clear of the Corporation's security interest therein, and confirm in writing to the Property Trustee that such release and Transfer has occurred, and (iv) the Securities Registrar, pursuant to the procedures provided for in Section 5.11 of the Declaration dealing with increasing and decreasing the number of Trust Preferred Securities evidenced by Book-Entry HITS Certificates, shall cancel the number of Treasury HITS and Corporate HITS delivered pursuant to Section 6.03(a) and deliver a Like Amount of Preferred HITS to the Holder, all by making appropriate notations on the Book-Entry HITS Certificates of the appropriate Class.

(b) The substitution of Notes for financial assets held in the Collateral Account pursuant to this Section 6.03 shall not constitute a novation of the security interest created hereby.

Section 6.04 *Termination Event*.

(a) Upon receipt by the Collateral Agent of written notice from the Corporation, the Property Trustee or any of the Regular Trustees of the Trust that a Termination Event has occurred, the Collateral Agent shall release all Collateral from the Pledge and shall promptly instruct the Securities Intermediary to Transfer:

(i) any Pledged Notes;

(ii) the Proceeds of the Bank of America Deposit; and

(iii) any Pledged Treasury Securities,

to the Property Trustee, free and clear of the Pledge created hereby.

(b) If such Termination Event shall result from the Corporation's becoming a debtor under Bankruptcy Laws, and if the Collateral Agent shall for any reason fail promptly to effectuate the release and Transfer of all Pledged Notes, Pledged Treasury Securities, Permitted Investments, the Bank of America Deposit and Proceeds of any of the foregoing, as the case may be, as provided by this Section 6.04, the Regular Trustees shall:

(i) use their best efforts to obtain an opinion of a nationally recognized law firm to the effect that, notwithstanding the Corporation being the debtor in such a bankruptcy case, the Collateral Agent will not be prohibited from releasing or Transferring the Collateral as provided in this Section 6.04 and shall deliver or cause to be delivered such opinion to the Collateral Agent within ten calendar days after the occurrence of such Termination Event, and if (A) the Regular Trustees shall be unable to obtain such opinion within ten calendar days after the occurrence of such Termination Event or (B) the Collateral Agent shall continue, after delivery of such opinion, to refuse to effectuate the release and Transfer of all Pledged Notes, Pledged Treasury Securities, Permitted Investments, the Bank of America Deposit and Proceeds of any of the foregoing, as the case may be, as provided in this Section 6.04, then the Property Trustee, pursuant to the written direction of the Regular Trustees, shall, subject to Article VIII of the Declaration, within fifteen calendar days after the Property Trustee has received such direction from the Regular Trustees, commence an action or proceeding in the court having jurisdiction of the Corporation's case under the Bankruptcy Laws seeking an order requiring the Collateral Agent to effectuate the release and Transfer of all Pledged Notes, Pledged Treasury Securities, Permitted Investments, the Bank of America Deposit and Proceeds of any of the foregoing, or as the case may be, as provided by this Section 6.04; or

(ii) commence an action or proceeding like that described in Section 6.04(b)(i) hereof within ten days after the occurrence of such Termination Event.

Section 6.05 *Reinvestment of Proceeds of Pledged Treasury Securities*.

(a) At or about 11:00 A.M., New York City time, on each Trade Date, the Collateral Agent pursuant to the direction of the Regular Trustees shall select at least three Reference Dealers (including at least three Reference Dealers named on Schedule I hereto or named by any of the Regular Trustees as replacements therefor who are approved counterparties of The Bank of New York Trust Company) and request each of them to provide a commitment (which may be oral if promptly confirmed in writing by facsimile or e-mail), satisfactory in form to the Collateral Agent, to the effect that if selected as the Final Dealer, such Reference Dealer shall sell to the Collateral Agent, for delivery against payment on the immediately succeeding Roll Date, an aggregate principal amount of the U.S. treasury security that is the Qualifying Treasury Security on such Roll Date equal to the aggregate principal amount of Qualifying Treasury Securities held in the Collateral Account on such Trade Date. If the Collateral Agent shall have received at least two firm offers, it shall select the lowest offer and the Reference Dealer providing the lowest offer shall be the "***Final Dealer***"; provided that if two or more Reference Dealers have provided identical lowest offers, the Collateral Agent shall select any of these Reference Dealers as the Final Dealer in its absolute discretion. The Final Dealer shall be obligated to sell to the Collateral Agent, for Cash on the Roll Date, the aggregate principal amount of the U.S. treasury security specified in such offer. If the Collateral Agent determines, or has received notice from the Regular Trustees, that (i) a Market Disruption Event has occurred or (ii) fewer than two Reference Dealers have provided firm offers in a timely manner meeting the foregoing requirements, the steps contemplated above shall be taken on each succeeding Business Day on which the Collateral Agent determines, or has received notice from the Regular Trustees, that no Market Disruption Event has occurred until at least two Reference Dealers have provided such offers, except that the Collateral Agent shall request offers from the Reference Dealers for same day settlement. The Collateral Agent shall use reasonable care in administering the foregoing procedures and shall have no liability in connection therewith to the Trust, the Property Trustee, the Corporation or any other Person in the absence of gross negligence or willful misconduct. All determinations regarding whether a Market Disruption Event pursuant to clause (i) of the definition thereof has occurred shall be made by the Collateral Agent in its sole discretion.

(b) On each Roll Date (or, if no Final Dealer shall have been selected on the Trade Date, on the date that the Final Dealer is selected), the Collateral Agent shall instruct the Securities Intermediary to apply the Proceeds of the U.S. treasury securities held in the Collateral Account to the purchase price of the Qualifying Treasury Securities, which shall be deposited in the Collateral Account, and to apply the excess of such Proceeds over the purchase price of the Qualifying Treasury Securities to purchase Permitted Investments for deposit in the Collateral Account.

(c) On each Additional Distribution Date, if the Qualifying Treasury Securities shall have been purchased and deposited in the Collateral Account, the Collateral Agent shall liquidate the Permitted Investments in the Collateral Account and direct the Securities Intermediary to pay the Proceeds to the Payment Account.

Section 6.06 *Application of Proceeds in Settlement of Stock Purchase Contracts*

(a) The Trust (acting through the Property Trustee) agrees to pay the purchase price under the Stock Purchase Contracts on the Stock Purchase Date from the Proceeds of the Qualifying Treasury Securities held in the Collateral Account and the Bank of America Deposit (or in the circumstances set forth in the Stock Purchase Contract Agreement, by assignment thereof). Without receiving any further instruction from the Property Trustee, the Collateral Agent shall, in settlement of such Stock Purchase Contracts on the Stock Purchase Date, (i) instruct the Securities Intermediary to remit Proceeds of the Qualifying Treasury Securities to the Corporation and (ii) instruct Bank of America, N.A. to pay the Proceeds of the Bank of America Deposit to the Corporation in an amount equal to the excess of the Purchase Price over the amount of the Proceeds of the Qualifying Treasury Securities.

(b) In the event of a Failed Remarketing, the Collateral Agent, for the benefit of the Corporation, will, at the written instruction of the Corporation, deliver or dispose of the Pledged Notes in accordance with the Corporation's written instructions to satisfy in full, from any such disposition or retention, the obligations of the Trust to pay the purchase price for the shares of Preferred Stock to be issued under the Stock Purchase Contracts to the extent not paid from the Proceeds of the Qualifying Treasury Securities held in the Collateral Account.

(c) Thereafter, the Collateral Agent shall promptly remit the Proceeds of the Qualifying Treasury Securities held in the Collateral Account in excess of the aggregate purchase price for the shares of Preferred Stock to be issued under such Stock Purchase Contracts to the Property Trustee or to the Paying Agent on behalf of the Property Trustee for deposit into the Payment Account.

ARTICLE VII

VOTING RIGHTS — NOTES

Section 7.01 *Voting Rights*.

The Property Trustee on behalf of the Trust may, subject to the Declaration, exercise, or refrain from exercising, any and all voting and other consensual rights pertaining to the Notes or any part thereof for any purpose not inconsistent with the terms of this Agreement and in accordance with the terms of the Stock Purchase Contract Agreement; provided, however, that the Property Trustee shall not exercise or shall not refrain from exercising such right with respect to any Notes, if, in the reasonable judgment of the Property Trustee, such action would impair or otherwise have a material adverse effect on the value of all or any of the Notes; and provided, further, that the Property Trustee shall give the Corporation, the Collateral Agent and the Custodial Agent, at least five Business Days' prior written notice of the manner in which it intends to exercise, or its reasons for refraining from exercising, any such right. Upon receipt of any notices and other communications in respect of any Notes, including notice of any meeting at which holders of the Notes are entitled to vote or solicitation of consents, waivers or proxies of holders of the Notes, the Collateral Agent and the Custodial Agent shall use reasonable efforts to send promptly to the Property Trustee such notice or communication, and as soon as reasonably practicable after receipt of a written request therefor from the Property Trustee, execute and

deliver to the Property Trustee such proxies and other instruments in respect of such Notes (in form and substance satisfactory to the Collateral Agent or the Custodial Agent, as the case may be) as are prepared by the Corporation and delivered to the Property Trustee with respect to the Notes.

ARTICLE VIII

RIGHTS AND REMEDIES

Section 8.01 *Rights and Remedies of the Collateral Agent.*

(a) In addition to the rights and remedies specified in Section 6.04 or otherwise available at law or in equity, after an event of default (as specified in Section 8.01(b)) hereunder, the Collateral Agent shall have all of the rights and remedies with respect to the Collateral of a secured party under the UCC (whether or not the UCC is in effect in the jurisdiction where the rights and remedies are asserted) and the Trades Regulations and such additional rights and remedies to which a secured party is entitled under the laws in effect in any jurisdiction where any rights and remedies hereunder may be asserted. Without limiting the generality of the foregoing, such remedies may include, to the extent permitted by applicable law, (1) retention of the Pledged Notes or the Pledged Treasury Securities in full satisfaction of the Trust's or the Property Trustee's obligations under the Stock Purchase Contracts and the Stock Purchase Contract Agreement or (2) sale of the Pledged Notes or the Pledged Treasury Securities in one or more public or private sales as permitted by applicable law.

(b) Without limiting any rights or powers otherwise granted by this Agreement to the Collateral Agent, in the event the Corporation is unable to make payments from amounts transferred or transferable to the Corporation on account of the principal payments of any Pledged Treasury Securities as provided in Article V, in satisfaction of the Obligations of the Trust under the Stock Purchase Contracts, the inability to make such payments shall constitute an event of default hereunder and the Collateral Agent shall have and may exercise, with reference to such Pledged Treasury Securities any and all of the rights and remedies available to a secured party under the UCC and the Trades Regulations after default by a debtor, and as otherwise granted herein or under any other law.

(c) Without limiting any rights or powers otherwise granted by this Agreement to the Collateral Agent, the Collateral Agent is hereby irrevocably authorized to receive and collect all payments of (i) the principal amount of, and any interest on, the Pledged Notes and (ii) the principal amount of, and any interest on, the Pledged Treasury Securities, subject, in each case, to the provisions of Article V, and as otherwise granted herein.

(d) The Property Trustee agrees that, from time to time, upon the written request of the Corporation or the Collateral Agent (acting upon the request of the Corporation), the Property Trustee shall execute and deliver such further documents and do such other acts and things as the Corporation or the Collateral Agent (acting upon the request of the Corporation) may reasonably request in order to maintain the Pledge, and the perfection and priority thereof, and to confirm the rights of the Collateral Agent hereunder; provided that, in no event shall the Property Trustee be responsible for the preparation (other than execution upon the request of the

Corporation) or filing of any financing or continuation statements. In the absence of bad faith, the Property Trustee shall have no liability to the Corporation or the Collateral Agent (acting upon the request of the Corporation) for executing any documents or taking any such acts requested by the Corporation or the Collateral Agent (acting upon the request of the Corporation) hereunder.

Section 8.02 *Remarketing; Contingent Exchange Elections by Holder of Preferred HITS*

(a) In the event a Holder of Preferred HITS exercises its rights pursuant toSections 5.14(a)(i), (b) and (d) of the Declaration to contingently exchange Preferred HITS and Qualifying Treasury Securities for Treasury HITS and Corporate HITS in connection with any Remarketing,

(i) during the period that commences with the Collateral Agent's and the Securities Registrar's opening of normal business hours on the tenth Business Day immediately preceding the first day of a Remarketing Period and ending at 3:00 P.M., New York City time, on the second Business Day immediately preceding the first day of such Remarketing Period, Transferring the Preferred HITS that are the subject of such Contingent Exchange Election to the Securities Registrar, accompanied by a duly executed and completed Notice of Contingent Exchange Election; and

(ii) by not later than 3:00 P.M., New York City time, on the second Business Day immediately preceding the first day of such Remarketing Period, depositing with the Collateral Agent the treasury security that is the Qualifying Treasury Security on the date of deposit, in the amount of $1,000 for each Preferred HITS that is subject to the Contingent Exchange Election,

the Collateral Agent shall, upon the Transfer and receipt of the duly executed and completed Notice of Contingent Exchange Election pursuant toclause (i) and the deposit referred to in clause (ii), notify the Remarketing Agent not later than 11:00 A.M., New York City time, on the Business Day immediately preceding the first day of each Remarketing Period of the aggregate principal amount of Pledged Notes with respect to which elections have been validly made pursuant to this Section 8.02(a).

(b) Upon the receipt of notice from the Remarketing Agent that the Remarketing has been Successful, on the Remarketing Settlement Date,

(i) the Collateral Agent shall (A) instruct the Securities Intermediary to release from the Pledge and deliver to the Remarketing Agent the Pledged Notes for which no election has been validly made pursuant to Section 8.02(a), free and clear of the Corporation's security interest therein, against delivery by the Remarketing Agent of Qualifying Treasury Securities purchased with the net Proceeds of the sale of such Pledged Notes in the Remarketing for deposit in the Collateral Account, (B) instruct the Securities Intermediary to release from the Pledge and (C) Transfer to the Custody Account the Pledged Notes for which an election has been validly made pursuant to Section 8.02(a), free and clear of the Corporation's security interest therein, upon

delivery by the Collateral Agent to the Securities Intermediary for deposit into the Collateral Account the Qualifying Treasury Securities to be deposited in connection with such elections, and confirm to the Property Trustee in writing that such instructions have been delivered;

(ii) the Securities Intermediary will (A) release the Pledged Notes from the Pledge, Transfer such Pledged Notes, free and clear of the Pledge, (x) to the Remarketing Agent in the case of Pledged Notes for which no election has been validly made pursuant to Section 8.02(a) and (y) to the Custody Account in the case of Pledged Notes for which an election has been validly made pursuant to Section 8.02(a), (B) deposit in the Collateral Account as Pledged Treasury Securities the Qualifying Treasury Securities deposited with the Collateral Agent pursuant to Section 8.02(a) or delivered by the Remarketing Agent and (C) confirm to the Property Trustee in writing that such release, Transfer and deposit have occurred;

(iii) the Custodial Agent shall hold such Notes delivered to it pursuant to clause (ii)(y) of this Section 8.02(b) in the Custody Account; and

(iv) the Securities Registrar shall cancel the number of Preferred HITS Transferred pursuant to Section 8.02(a) and deliver a Like Amount of Corporate HITS and Treasury HITS to the Holder in accordance with the procedures provided for in Section 5.14 of the Declaration.

(c) Upon the receipt of notice from the Remarketing Agent that the Remarketing has not been Successful:

(i) as soon as reasonably practicable after the Remarketing, the Collateral Agent will deliver back to such Holder the Qualifying Treasury Securities delivered by such Holder to the Collateral Agent pursuant to Section 8.02(a); and

(ii) the Securities Registrar will disregard the delivery by such Holder of Preferred HITS pursuant to Section 8.02(a), with the consequence that such Holder shall be deemed to continue to hold such Preferred HITS.

(d) The substitution of Qualifying Treasury Securities, or security entitlements thereto, for financial assets held in the Collateral Account pursuant to this Section 8.02, shall not constitute a novation of the security interest created hereby.

Section 8.03 *Contingent Disposition Election by Holder of Corporate HITS*

(a) In the event a Holder of Corporate HITS exercises its rights pursuant to Sections 5.14(a)(ii), (b), (f) and (g) of the Declaration to contingently dispose of Corporate HITS in connection with any Remarketing by, during the period that commences with the Custodial Agent's and Securities Registrar's opening of normal business hours on the tenth Business Day immediately preceding the first day of a Remarketing Period and ending at 3:00 P.M., New York City time, on the second Business Day immediately preceding the first day of such Remarketing Period, Transferring the Corporate HITS that are the subject of such Contingent Disposition Election to the Securities Registrar and delivering a duly completed Notice of Contingent

Disposition Election to the Securities Registrar and the Custodial Agent, the Custodial Agent shall, upon such Transfer and receipt of such notice, notify the Remarketing Agent not later than 11:00 A.M., New York City time, on the Business Day immediately preceding the first day of each Remarketing Period of the aggregate principal amount of Custody Notes with respect to which elections have been validly made pursuant to this Section 8.03(a).

(b) If the Custodial Agent is notified by the Remarketing Agent that the related Remarketing is Successful:

(i) the Securities Registrar shall cancel the number of Corporate HITS Transferred pursuant to Section 8.03(a) in accordance with the procedures provided for in Section 5.11 of the Declaration;

(ii) the Custodial Agent shall deliver Custody Notes in the aggregate principal amount with respect to which elections have been validly made pursuant to Section 8.03(a) to the Remarketing Agent on the Remarketing Settlement Date; and

(iii) on or promptly after the Remarketing Settlement Date, the Custodial Agent will pay to the Property Trustee the net Proceeds of the Custody Notes received from the Remarketing Agent.

(c) If the Custodial Agent is notified by the Remarketing Agent that the related Remarketing is not Successful, the Securities Registrar will disregard the delivery by such Holder of Corporate HITS pursuant to Section 8.03(a), with the consequence that such Holder shall continue to hold such Corporate HITS.

(d) None of the Collateral Agent, the Securities Intermediary, the Custodial Agent, the Securities Registrar, the Property Trustee, the Corporation or the Remarketing Agent shall be obligated in any case to provide funds to make payment upon tender of Notes for Remarketing.

ARTICLE IX

REPRESENTATIONS AND WARRANTIES; COVENANTS

Section 9.01 *Representations and Warranties*.

The Property Trustee on behalf of the Trust hereby represents and warrants to the Collateral Agent that:

(a) the Property Trustee on behalf of the Trust has the power to grant a security interest in and lien on the Collateral; and

(b) the Property Trustee on behalf of the Trust is the sole beneficial owner of the Collateral and, in the case of Collateral delivered in physical form, is the sole holder of such Collateral and is the sole beneficial owner of, or has the right to Transfer, the Collateral it Transfers to the Collateral Agent for credit to the Collateral Account, free and clear of any security interest, lien, encumbrance, call, liability to pay money or other restriction other than the security interest and lien granted under Article II hereof.

Section 9.02 *Covenants*.

The Property Trustee on behalf of the Trust hereby covenants to the Collateral Agent that for so long as the Collateral remains subject to the Pledge:

(a) it will not create or purport to create or allow to subsist any mortgage, charge, lien, pledge or any other security interest whatsoever over the Collateral or any part of it other than pursuant to this Agreement; and

(b) it will not sell or otherwise dispose (or attempt to dispose) of the Collateral or any part of it except in accordance with the terms of this Agreement.

ARTICLE X

THE COLLATERAL AGENT, THE CUSTODIAL AGENT, THE SECURITIES INTERMEDIARY AND THE SECURITIES REGISTRAR

It is hereby agreed as follows:

Section 10.01 *Appointment, Powers and Immunities*.

The Collateral Agent and the Securities Intermediary shall act as agents for the Corporation hereunder with such powers as are specifically vested in the Collateral Agent or the Securities Intermediary, as the case may be, by the terms of this Agreement and the Collateral Agent and the Securities Intermediary owe no duties, fiduciary or otherwise, to any other Person except as provided by applicable law. The Custodial Agent and the Securities Registrar shall act as agents for the Property Trustee hereunder with such powers as are specifically vested in the Custodial Agent or the Securities Registrar, as the case may be, by the terms of this Agreement and, in the case of the Securities Registrar, the Declaration and the Custodial Agent and the Securities Registrar owe no duties, fiduciary or otherwise, to any other Person except as provided by applicable law. The Collateral Agent, the Custodial Agent, the Securities Intermediary and the Securities Registrar shall:

(a) have no duties or responsibilities except those expressly set forth in this Agreement and no implied covenants or obligations shall be inferred from this Agreement against the Collateral Agent, the Custodial Agent, the Securities Intermediary and the Securities Registrar, nor shall the Collateral Agent, the Custodial Agent, the Securities Intermediary and the Securities Registrar be bound by the provisions of any agreement by any party hereto beyond the specific terms hereof;

(b) not be responsible for any recitals contained in this Agreement, or in any certificate or other document referred to or provided for in, or received by it under, this Agreement, the HITS or the Stock Purchase Contract Agreement, or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement (other than as against the Collateral Agent, the Custodial Agent or the Securities Registrar, as the case may be), the HITS, any Collateral or the Stock Purchase Contract Agreement or any other document referred to or provided for herein or therein or for any failure by the Corporation or any other Person

(except the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar, as the case may be) to perform any of its obligations thereunder or hereunder or for the validity, perfection, enforceability, priority or, except as expressly required hereby, maintenance of any security interest created hereunder;

(c) not be required to initiate or conduct any litigation or collection efforts or proceedings hereunder (except pursuant to directions furnished under Section 10.02, subject to Section 10.08);

(d) not be responsible for the exercise of any of the rights and remedies (at the direction of the Property Trustee or the Holders of the HITS, or otherwise) upon a default or event of default under the Supplemenal Indenture;

(e) not be responsible for any action taken, suffered or omitted to be taken by it hereunder or under any other document or instrument referred to or provided for herein or in connection herewith or therewith, except for its own gross negligence or willful misconduct; and

(f) not be required to advise any party as to selling or retaining, or taking or refraining from taking any action with respect to, any securities or other property deposited hereunder.

Subject to the foregoing, during the term of this Agreement, the Collateral Agent, the Securities Intermediary, the Custodial Agent and Securities Registrar shall take all reasonable action in connection with the safekeeping and preservation of the Collateral and the Custody Notes hereunder as determined by industry standards.

No provision of this Agreement shall require the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder. In no event shall the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar be liable for any amount in excess of the Value of the Collateral and the Custody Notes.

Section 10.02 *Instructions of the Corporation.*

The Corporation shall have the right, by one or more written instruments executed and delivered to the Collateral Agent, to direct the time, method and place of conducting any proceeding for the realization of any right or remedy available to the Collateral Agent, or of exercising any power conferred on the Collateral Agent, or to direct the taking or refraining from taking of any action authorized by this Agreement; provided that (i) such direction shall not conflict with the provisions of any law or of this Agreement or involve the Collateral Agent in personal liability and (ii) the Collateral Agent shall be indemnified as provided herein. Nothing contained in this Section 10.02 shall impair the right of the Collateral Agent in its discretion to take any action or omit to take any action which it deems proper and which is not inconsistent with such direction. None of the Collateral Agent, the Custodial Agent or the Securities Registrar has any obligation or responsibility for determining the necessity of filing or to file or monitor the filing of UCC financing statements or other UCC statements.

Section 10.03 *Reliance by Collateral Agent, Custodial Agent, Securities Intermediary and Securities Registrar.*

Each of the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar shall be entitled to rely conclusively upon any certification, order, judgment, opinion, notice or other written or telephonic communication (including, without limitation, any thereof by e-mail or similar electronic means, telecopy, telex or facsimile) believed by it to be genuine and to have been signed or sent by or on behalf of the proper Person or Persons (without being required to determine the correctness of any fact stated therein). Each of the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar may consult with legal counsel or other experts of its selection and the advice, opinions and statements of such legal counsel and other experts and any opinion of counsel 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 reliance thereon. As to any matters not expressly provided for by this Agreement, the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar shall in all cases be fully protected in acting, suffering, or in refraining from acting hereunder in accordance with instructions given by the Corporation or the Property Trustee in accordance with this Agreement. In the event any instructions are given (other than in writing at the time of the execution of the Agreement), whether in writing, by telecopier or otherwise, the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar are authorized (but shall not be required) to seek confirmation of such instructions by telephone call-back to the person or persons designated on Schedule II hereto, and the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar may conclusively rely upon the confirmations of anyone purporting to be the Person or Persons so designated. The persons and telephone numbers for call-backs may be changed only in writing actually received and acknowledged by the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar.

It is understood that the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar in any funds transfer may rely solely upon any account numbers or similar identifying numbers provided by the Corporation or the Property Trustee to identify (i) the beneficiary, (ii) the beneficiary's bank, or (iii) an intermediary bank. The Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar may apply any of the deposited funds for any payment order it executes using any such identifying number, even where its use may result in a Person other than the beneficiary being paid, or the transfer of funds to a bank other than the beneficiary's bank, or an intermediary bank, designated by the Corporation or the Property Trustee; provided that payment is made and confirmed to the account as specified by the Corporation or the Property Trustee, as the case may be.

Section 10.04 *Certain Rights*.

(a) Whenever in the administration of the provisions of this Agreement the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering or omitting to take any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of bad faith on the part of the Collateral

Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar, be deemed to be conclusively proved and established by a certificate signed by one of the Corporation's officers, and delivered to the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar and such certificate, in the absence of bad faith on the part of the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar, shall be full warrant to the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar for any action taken, suffered or omitted by any of them under the provisions of this Agreement in reliance thereon.

(b) The Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar 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, entitlement order, approval or other paper or document.

(c) None of the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar shall be responsible or liable for any failure or delay in the performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God, earthquakes, fires, floods, terrorism, wars, civil or military disturbances, sabotage, epidemics, riots, interruptions, loss or malfunctions of utilities, computer (hardware or software) or communication services, accidents, labor disputes, acts of civil or military authority and governmental action.

(d) The Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar may request that the Corporation and the Property Trustee each deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Agreement, which Officers' Certificate may be signed by any person authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded.

(e) The permissive right of the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar to take or refrain from taking any actions enumerated in this Agreement shall not be construed as a duty;

(f) None of the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar shall be liable for any error of judgment made in good faith, unless it shall have been grossly negligent in ascertaining the pertinent facts.

(g) The Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar shall have no liability whatsoever for the action or inaction of any Clearing Agency or any book-entry system thereof. In no event shall any Clearing Agency or any book-entry system thereof be deemed an agent or subcustodian of the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar. Unless and until Definitive HITS Certificates have been issued to Owners pursuant to Section 5.15 of the Declaration, the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar shall be entitled to deal with the Clearing Agency for all purposes of this Agreement (including the receipt or transfer of any funds hereunder) as the Holder of the Trust Preferred Securities,

shall have no obligation to the Owners and the rights of the Owners shall be exercised only through the Clearing Agency and shall be limited to those established by law and agreement between such Owners and the Trust or the Clearing Agency Participants. The provisions of Sections 5.6 and 5.11 of the Declaration are hereby made applicable to the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar, mutatis mutandis, as if they were the Securities Registrar as referred to therein.

(h) The Securities Registrar shall also have all of the rights, privileges, protections, immunities and benefits given to the Securities Registrar under the Declaration, including its right to be indemnified. In the event of any conflict between any of the provisions of the Declaration and this Agreement with respect to any of such rights, privileges, protections, immunities and benefits, the provisions of this Agreement shall govern and control and supersede such other provisions.

Section 10.05 *Merger, Conversion, Consolidation or Succession to Business.*

Any Person into which the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar shall be a party, or any Person succeeding to all or substantially all of the corporate trust business of the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar shall be the successor of the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar hereunder without the execution or filing of any paper with any party hereto or any further act on the part of any of the parties hereto except where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding.

Section 10.06 *Rights in Other Capacities.*

The Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar and their Affiliates may (without having to account therefor to the Corporation) accept deposits from, lend money to, make their investments in and generally engage in any kind of banking, trust or other business with the Trust, any other Person interested herein and any Holder of Trust Preferred Securities (and any of their respective subsidiaries or Affiliates) as if it were not acting as the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar, as the case may be, and the Collateral Agent, the Securities Intermediary, the Custodial Agent, the Securities Registrar and their Affiliates may accept fees and other consideration from the Trust, any other Person interested herein and any Holder of Trust Preferred Securities without having to account for the same to the Corporation; provided that each of the Securities Registrar, the Securities Intermediary, the Custodial Agent and the Collateral Agent covenants and agrees with the Corporation that it shall not accept, receive or permit there to be created in favor of itself and shall take no affirmative action to permit there to be created in favor of any other Person, any security interest, lien or other encumbrance of any kind in or upon the Collateral other than the lien created by the Pledge.

Section 10.07 *Non-reliance on Collateral Agent, the Securities Intermediary, the Custodial Agent and Securities Registrar.*

None of the Securities Registrar, the Securities Intermediary, the Custodial Agent or the Collateral Agent shall be required to keep itself informed as to the performance or observance by the Trust or any Holder of Trust Preferred Securities of this Agreement, the Stock Purchase Contract Agreement, the Trust Preferred Securities or any other document referred to or provided for herein or therein or in connection herewith or therewith or to inspect the properties or books of the Trust or any Holder of Trust Preferred Securities. None of the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar shall have any duty or responsibility to provide the Corporation or the Property Trustee with any credit or other information concerning the affairs, financial condition or business of the Trust or the Corporation or any Holder of Trust Preferred Securities (or any of their respective Affiliates) that may come into the possession of the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar or any of their respective Affiliates.

Section 10.08 *Compensation and Indemnity*.

The Corporation agrees to:

(a) pay the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar from time to time such compensation as shall be agreed in writing between the Corporation and the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar, as the case may be, for all services rendered by them hereunder;

(b) indemnify and hold harmless the Collateral Agent, the Securities Intermediary, the Custodial Agent, the Securities Registrar and each of their respective directors, officers, agents and employees (collectively, the "***Indemnitees***"), from and against any and all claims, liabilities, losses, damages, fines, penalties and expenses (including reasonable fees and expenses of counsel) and taxes (other than those based upon, determined by or measured by the income of the Collateral Agent, the Custodial Agent and the Securities Registrar) (collectively, "***Losses***" and individually, a "***Loss***") that may be imposed on, incurred by, or asserted against, the Indemnitees or any of them for or in respect of the Collateral Agent's, the Securities Intermediary's, the Custodial Agent's and the Securities Registrar's (i) execution and delivery of this Agreement and (ii) following any instructions or other directions upon which either the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar is entitled to rely pursuant to the terms of this Agreement; and

(c) in addition to and not in limitation of clause (b) immediately above, indemnify and hold the Indemnitees and each of them harmless from and against any and all Losses that may be imposed on, incurred by or asserted against, the Indemnitees or any of them in connection with or arising out of the Collateral Agent's, the Securities Intermediary's, the Custodial Agent's or the Securities Registrar's acceptance or performance of its powers and duties under this Agreement, provided that any Indemnitee with respect to the specific Loss against which indemnification is sought under this clause (c) has not acted with gross negligence or engaged in willful misconduct.

The provisions of this Section 10.08 and Section 12.07 shall survive the resignation or removal of the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar and the termination of this Agreement.

Section 10.09 *Failure to Act.*

In the event of (i) uncertainty on the part of the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar as to the application of any provision in this Agreement or any other agreement relating to the transaction contemplated hereby or (ii) any ambiguity in the provisions of this Agreement or any dispute between or conflicting claims by or among the parties hereto or any other Person with respect to any funds or property deposited hereunder, such Collateral Agent, Securities Intermediary, Custodial Agent or Securities Registrar in the case of (i) or each of the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar in the case of (ii) shall be entitled, at its sole option and after prompt written notice to the Corporation and the Trust, to refrain from taking any action in respect of such uncertainty or ambiguous provision or to refuse to comply with any and all claims, demands or instructions with respect to such property or funds so long as such dispute or conflict shall continue, and the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar shall not be or become liable in any way to any of the parties hereto for its so refraining or refusal to comply with such conflicting claims, demands or instructions. The Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar shall be entitled to refuse to act until either:

(a) such ambiguous provisions or conflicting or adverse claims or demands, as the case may be, shall have been finally determined by a court of competent jurisdiction or settled by agreement between the conflicting parties as evidenced in a writing satisfactory to the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar; or

(b) the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar shall have received security or an indemnity satisfactory to it sufficient to save it harmless from and against any and all loss, liability or reasonable out-of-pocket expense which it may incur by reason of its acting.

The Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar may in addition elect to commence an interpleader action or seek other judicial relief or orders as the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar may deem necessary. Notwithstanding anything contained herein to the contrary, none of the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar shall be required to take any action that it reasonably believes to be contrary to law or to the terms of this Agreement, or which it reasonably believes would subject it or any of its officers, employees or directors to liability.

Section 10.10 *Resignation of Collateral Agent, the Securities Intermediary, the Custodial Agent and Securities Registrar.*

Subject to the appointment and acceptance of a successor Collateral Agent, Securities Intermediary, Custodial Agent and Securities Registrar as provided below:

(i) the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar may resign at any time by giving notice thereof to the Corporation and the Property Trustee;

(ii) the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar may be removed at any time by the Corporation; and

(iii) if the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar fails to perform any of its material obligations hereunder in any material respect for a period of not less than 20 days after receiving written notice of such failure by the Property Trustee or the Regular Trustees and such failure shall be continuing, the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar may be removed by the Property Trustee or the Regular Trustees;

provided that any Person at any time acting as Collateral Agent, Securities Intermediary, Custodial Agent or Securities Registrar may not resign or be removed in any one of those capacities without the consent of each party to this Collateral Agreement unless it resigns or is removed in all such capacities in which it is then acting. The Property Trustee or the Regular Trustees shall promptly notify the Corporation of any removal of the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar pursuant to clause (iii) of this Section 10.10. Upon any such resignation or removal, the Corporation shall have the right to appoint a successor Collateral Agent, Securities Intermediary, Custodial Agent or Securities Registrar, as the case may be, which shall not be an Affiliate of the Trust. If no successor Collateral Agent, Securities Intermediary, Custodial Agent or Securities Registrar shall have been so appointed and shall have accepted such appointment within 30 days after the retiring Collateral Agent's, Securities Intermediary's, Custodial Agent's or Securities Registrar's giving of notice of resignation or the Corporation's or the Property Trustee's giving notice of such removal, then the retiring or removed Collateral Agent, Securities Intermediary, Custodial Agent or Securities Registrar may petition any court of competent jurisdiction, at the expense of the Corporation, for the appointment of a successor Collateral Agent, Securities Intermediary, Custodial Agent or Securities Registrar. The Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar shall each be a bank or a national banking association which has an office (or an agency office) in New York City with a combined capital and surplus of at least $50,000,000. Upon the acceptance of any appointment as Collateral Agent, Securities Intermediary, Custodial Agent or Securities Registrar hereunder by a successor Collateral Agent, Securities Intermediary, Custodial Agent or Securities Registrar, as the case may be, such successor Collateral Agent, Securities Intermediary, Custodial Agent or Securities Registrar, as the case may be, shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent, Securities Intermediary, Custodial Agent or Securities Registrar, as the case may be, and the retiring Collateral Agent, Securities Intermediary, Custodial Agent or Securities Registrar, as the case may be, shall take all

appropriate action, subject to payment of any amounts then due and payable to it hereunder, to transfer any money and property held by it hereunder (including the Collateral) to such successor. The retiring Collateral Agent, Securities Intermediary, Custodial Agent or Securities Registrar shall, upon such succession, be discharged from its duties and obligations as Collateral Agent, Securities Intermediary, Custodial Agent or Securities Registrar hereunder. After any retiring Collateral Agent's, Securities Intermediary's, Custodial Agent's or Securities Registrar's resignation or removal hereunder as Collateral Agent, Securities Intermediary, Custodial Agent or Securities Registrar, the provisions of this Article X shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Collateral Agent, Securities Intermediary, Custodial Agent or Securities Registrar. Any resignation or removal of the Collateral Agent, Custodial Agent or Securities Registrar hereunder, at a time when such Person is acting as the Collateral Agent, Securities Intermediary, Custodial Agent or Securities Registrar, shall be deemed for all purposes of this Agreement as the simultaneous resignation or removal of the Collateral Agent, Securities Registrar or Custodial Agent, as the case may be.

Section 10.11 *Right to Appoint Agent or Advisor.*

The Collateral Agent shall have the right to appoint agents or advisors in connection with any of its duties hereunder, and the Collateral Agent shall not be liable for any action taken, suffered or omitted by, or in reliance upon the advice of, such agents or advisors selected in good faith. The appointment of agents (which, for the purpose of this sentence, excludes legal counsel) pursuant to this Section 10.11 shall be subject to prior written consent of the Corporation, which consent shall not be unreasonably withheld.

Section 10.12 *Survival.*

The provisions of this Article X and Section 12.06 shall survive termination of this Agreement and the resignation or removal of the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar.

Section 10.13 *Exculpation*.

Anything contained in this Agreement to the contrary notwithstanding, in no event shall the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar or their officers, directors, employees or agents be liable under this Agreement for indirect, special, punitive, or consequential loss or damage of any kind whatsoever, including, but not limited to, lost profits, whether or not the likelihood of such loss or damage was known to the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar, or any of them and regardless of the form of action.

Section 10.14 *Statements and Confirmations.*

The Securities Intermediary will, as soon as reasonably practicable after receipt of same, send copies of all statements, confirmations and other correspondence concerning the Collateral Account and any financial assets credited thereto simultaneously to each of the Property Trustee and the Collateral Agent at their addresses for notices under this Agreement. The Custodial

Agent will, as soon as reasonably practicable after receipt of same, send copies of all statements, confirmations and other correspondence concerning the Custody Account and any financial assets credited thereto to the Property Trustee at its address for notices under this Agreement.

Section 10.15 *Tax Allocations.*

The Regular Trustees shall report all items of income, gain, expense and loss recognized in the Collateral Account and the Custody Account, to the extent such reporting is required by law, to the Internal Revenue Service authorities in the manner required by law. None of the Securities Intermediary, the Collateral Agent, the Custodial Agent, the Securities Registrar or the Property Trustee shall have any tax reporting duties hereunder.

ARTICLE XI

AMENDMENT

Section 11.01 *Amendment.*

The Corporation, when duly authorized by resolution of its Board of Directors, the Collateral Agent, the Securities Intermediary, the Custodial Agent, the Securities Registrar and the Property Trustee on behalf of the Trust, at any time and from time to time, may amend this Agreement by a written instrument, in form satisfactory to the Corporation, the Collateral Agent, the Securities Intermediary, the Custodial Agent, the Securities Registrar and the Property Trustee, as provided under Section 6.1(c) of the Declaration. Notwithstanding the foregoing, any amendment to the forms of HITS certificates attached as exhibits hereto shall be effective upon written notice thereof from the Corporation without the consent of the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar setting forth the revised form or forms and confirming that such revised form or forms have been duly adopted in accordance with the Declaration; provided that no such amendment that adversely affects the rights, duties or immunities of the Collateral Agent, the Securities Intermediary, the Custodial Agent or the Securities Registrar shall be effective against such adversely affected party without its consent.

Section 11.02 *Execution of Amendments.*

In executing any amendment permitted by this Article XI, the Collateral Agent, the Securities Intermediary, the Custodial Agent, the Securities Registrar and the Property Trustee shall be entitled to receive and (subject to Section 8.3 of the Declaration with respect to the Property Trustee) shall be fully authorized and protected in relying upon, an opinion of counsel and an Officers' Certificate of the Corporation to the effect that all of the requirements of Section 6.1(c) of the Declaration in respect of such amendment have been met and/or satisfied. The Collateral Agent, the Securities Intermediary, the Custodial Agent, the Securities Registrar and the Property Trustee may, but shall not be obligated to, enter into any such amendment which affects their own respective rights, duties or immunities under this Agreement or otherwise.

ARTICLE XII

MISCELLANEOUS

Section 12.01 *No Waiver*.

No failure on the part of the Corporation, the Collateral Agent, the Securities Intermediary, the Custodial Agent, the Securities Registrar or any of their respective agents to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy hereunder shall operate a waiver thereof; nor shall any single or partial exercise by the Corporation, the Securities Intermediary, the Collateral Agent, the Custodial Agent, the Securities Registrar or any of their respective agents of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies herein are cumulative and are not exclusive of any remedies provided by law.

Section 12.02 *Governing Law; Submission to Jurisdiction; Waiver of Trial by Jury*.

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. The Corporation, the Collateral Agent, the Securities Intermediary, the Custodial Agent, the Securities Registrar and the Trust hereby submit to the nonexclusive jurisdiction of the United States District Court for the Southern District of New York and the courts of the State of New York (in each case sitting in New York County) for the purposes of all legal proceedings arising out of or relating to this Agreement or the transactions contemplated hereby. The Corporation, the Collateral Agent, the Securities Intermediary, the Custodial Agent, the Securities Registrar and the Trust irrevocably waive, to the fullest extent permitted by applicable law, any objection that they may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum. **TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

Section 12.03 *Notices*.

All notices, requests, consents and other communications provided for herein (including, without limitation, any modifications of, or waivers or consents under, this Agreement) shall be given or made in writing (including, without limitation, by telecopy) delivered to the intended recipient at the "*Address for Notices*" specified below its name on the signature pages hereof or, as to any party, at such other address as shall be designated by such party in a notice to the other parties. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given when personally delivered or, in the case of a mailed or telecopied notice, upon receipt, in each case given or addressed as aforesaid.

Section 12.04 *Successors and Assigns*.

This Agreement shall be binding upon and inure to the benefit of the respective successors of the Corporation, the Collateral Agent, the Custodial Agent, the Securities Intermediary, the Securities Registrar and the Trust.

Nothing in this Agreement, express or implied, shall give any Person, other than the parties hereto and their permitted successors, any benefit or any legal or equitable right, remedy or claim under this Agreement.

Section 12.05 *Severability*.

If any provision hereof is invalid and unenforceable in any jurisdiction, then, to the fullest extent permitted by law, (a) the other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in order to give effect to the intentions of the parties hereto as nearly as may be possible and (b) the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

Section 12.06 *Expenses, Etc*.

The Corporation agrees to reimburse the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar for:

(a) all reasonable costs and expenses of the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar (including, without limitation, the reasonable fees and expenses of counsel to the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar), in connection with (i) the negotiation, preparation, execution and delivery or performance of this Agreement and (ii) any modification, supplement or waiver of any of the terms of this Agreement;

(b) all reasonable costs and expenses of the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar (including, without limitation, the reasonable fees and expenses of counsel) in connection with (i) any enforcement or proceedings resulting or incurred in connection with causing the Trust or the Property Trustee to satisfy its obligations under the Stock Purchase Contracts or the Stock Purchase Contract Agreement and (ii) the enforcement of this Section 12.06;

(c) all transfer, stamp, documentary or other similar taxes, assessments or charges levied by any governmental or revenue authority in respect of this Agreement or any other document referred to herein and all costs, expenses, taxes, assessments and, subject to Section 10.01(b) and the last sentence of Section 10.01, other charges incurred in connection with any filing, registration, recording or perfection of any security interest contemplated hereby;

(d) all reasonable fees and expenses of any agent or advisor appointed by the Collateral Agent and (except in the case of legal counsel) consented to by the Corporation under Section 10.11; and

(e) any other out-of-pocket costs and expenses reasonably incurred by the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Securities Registrar in connection with the performance of their duties hereunder.

Section 12.07 *Security Interest Absolute*.

All rights of the Collateral Agent and security interests hereunder, and all obligations of the Trust from time to time hereunder, shall be absolute and unconditional irrespective of:

(a) any lack of validity or enforceability of any provision of the Stock Purchase Contracts or any other agreement or instrument relating thereto;

(b) any change in the time, manner or place of payment of, or any other term of, or any increase in the amount of, all or any of the Obligations under the Stock Purchase Contracts, or any other amendment or waiver of any term of, or any consent to any departure from any requirement of, the Stock Purchase Contract Agreement or any Stock Purchase Contract or any other agreement or instrument relating thereto; or

(c) any other circumstance which might otherwise constitute a defense available to, or discharge of, a borrower, a guarantor or a pledgor.

Section 12.08 *Notice of Termination Event.*

Upon the occurrence of a Termination Event, the Corporation shall deliver written notice to the Property Trustee, the Collateral Agent, the Custodial Agent and the Securities Registrar. Upon the written request of the Collateral Agent or the Securities Registrar, the Corporation shall inform such party whether or not a Termination Event has occurred.

Section 12.09 *Incorporation by Reference.*

In connection with its execution and performance hereunder the Property Trustee is entitled to all rights, privileges, protections, immunities, benefits and indemnities provided to it under the Declaration.

Section 12.10 *No Recourse.*

It is expressly understood and agreed by the parties hereto that (a) this Agreement is executed and delivered by The Bank of New York, not individually or personally but solely as Property Trustee of the Trust, in the exercise of the powers and authority conferred and vested in it, (b) each of the representations, warranties, covenants, undertakings and agreements herein made on the part of the Trust is made and intended not as personal representations, warranties, covenants, undertakings and agreements by The Bank of New York but is made and intended for the purpose of binding only the Trust, (c) nothing herein contained shall be construed as creating any liability on The Bank of New York, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto and by any Person claiming by, through or under the parties hereto and (d) under no circumstances shall The Bank of New York be personally liable for the payment of any indebtedness or expenses of the Trust or be liable for the breach or failure of any obligation,

representation, warranty or covenant made or undertaken by the Trust under this Agreement or any other related documents.

* * * *

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

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

BANK OF AMERICA CORPORATION

By: /s/ Ann J. Travis
Name: Ann J. Travis
Title: Senior Vice President

Address for Notices:

Bank of America Corporation
Bank of America Corporate Center
NC1-007-07-06
100 North Tryon Street
Charlotte, North Carolina 28255
Facsimile: (704) 386-0270
Attention: Corporate Treasury—Securities Administration

THE BANK OF NEW YORK TRUST COMPANY, N.A.,
as Collateral Agent, Securities Intermediary, Custodial Agent and Securities Registrar

By: /s/ Tina D. Gonzales
Name: Tina D. Gonzales
Title: Assistant Treasurer

Address for Notices:

Towermarc Plaza
10161 Centurion Parkway
Jacksonville, Florida 32256
Attention: Corporate Trust Department
Telephone: (904) 645-1900
Facsimile: (904) 645-1921

BAC CAPITAL TRUST XIV

By: The Bank of New York, not in its individual capacity but solely as Property Trustee

By: /s/ Alexander Pabon
Name: Alexander Pabon
Title: Assistant Vice President

Address for Notices:

The Bank of New York,
as Property Trustee on behalf of
BAC Capital Trust XIV
101 Barclay Street, 8 West
New York, New York 10286
Facsimile: (904) 645-1921
Attention: Corporate Trust Trustee Administration

Exhibit A

FORM OF PREFERRED HITS CERTIFICATE

{*For inclusion in Global Certificates only* – THIS CERTIFICATE IS A GLOBAL CERTIFICATE WITHIN THE MEANING OF THE DECLARATION HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY (THE "DEPOSITARY") OR ITS NOMINEE. THIS CERTIFICATE IS EXCHANGEABLE FOR CERTIFICATES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE DECLARATION AND NO TRANSFER OF THIS CERTIFICATE (OTHER THAN A TRANSFER OF THIS CERTIFICATE AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY 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, IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENTAL AGENCY AND INVOLVES INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF PRINCIPAL.

No. _____ **Number of Preferred HITS:** _____

CUSIP No.: 05518VAA3

ISIN: US05518VAA35

BAC Capital Trust XIV

Preferred HITS

This Preferred HITS Certificate certifies that **[__]** is the registered Holder of the number of Preferred HITS set forth above {*for inclusion in Global Certificates only* - or such other number of Preferred HITS reflected in the Schedule of Increases and Decreases in the Global Certificate attached hereto}. Each Preferred HITS represents a beneficial interest in BAC Capital Trust XIV (the "Trust"), having a Liquidation Amount of $1,000. The Preferred HITS 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 as provided in

Section 5.4 of the Declaration (as defined below). The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Preferred HITS are set forth in, and this certificate and the Preferred HITS represented hereby are issued and shall in all respects be subject to the terms and provisions of the Amended and Restated Declaration of Trust of the Trust, dated as of February 16, 2007, as the same may be amended and restated from time to time (the "Declaration"), including the designation of the terms of the Preferred HITS as set forth therein. The Holder is entitled to the benefits of the Guarantee Agreement entered into by the Sponsor and The Bank of New York, as Guarantee Trustee, dated as of February 16, 2007 (the "Guarantee Agreement"). All capitalized terms used herein that are defined in the Declaration have the meaning set forth therein.

Section 5.13(b) of the Declaration provides for the procedures pursuant to which Holders of Preferred HITS may exchange Preferred HITS and Qualifying Treasury Securities for Treasury HITS and Corporate HITS and Section 5.14(d) of the Declaration provides for the procedures pursuant to which Holders of Preferred HITS may elect to exchange Preferred HITS and Qualifying Treasury Securities for Treasury HITS and Corporate HITS in the event a Remarketing is Successful. The forms of Splitting Notice and Request and Notice of Contingent Exchange Election required to be delivered in connection therewith are printed on the reverse hereof.

A copy of each of the Declaration and the Guarantee Agreement is available for inspection at the offices of the Property Trustee.

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

IN WITNESS WHEREOF, the Trust acting through one of its Regular Trustees has executed this Preferred HITS Certificate.

BAC CAPITAL TRUST XIV, acting through one of its Regular Trustees

By:
Name:
Date:

CERTIFICATE OF AUTHENTICATION

This certificate represents the Preferred HITS referred to in the within-mentioned Declaration.

Dated:

THE BANK OF NEW YORK TRUST COMPANY, N.A.,

as Securities Registrar

By:

Authorized Signatory

Distributions payable on each Preferred HITS will be set at (i) from the Closing Date to but not including the later of March 15, 2012 and the Stock Purchase Date (and for each related Distribution Period), 5.63% per annum (calculated on a 30/360 Basis) and (ii) thereafter, for each Distribution Period and related Regular Distribution Date, the greater of (A) Three-Month LIBOR for such Distribution Period plus 0.40% and (B) 4.00 % of the Liquidation Amount per Preferred HITS (calculated on an Actual/360 Basis) (the "***Coupon Rate***"). The Coupon Rate is payable on the stated liquidation amount of $1,000 per Preferred HITS, 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 will bear interest thereon (to the extent permitted by applicable law) at the Coupon Rate, compounded semi-annually through the later of March 15, 2012 and the Stock Purchase Date, and thereafter quarterly. The amount of Distributions payable for any period will be computed on the basis of (a) for periods prior to the later of March 15, 2012 and the Stock Purchase Date, a 360-day year of twelve 30-day months and (b) for periods beginning on or after such date, a 360-day year and the number of days actually elapsed.

Except as otherwise described below, Distributions on the Preferred HITS will accrue from the date of original issuance and will be payable as follows: (i) semi-annually in arrears for each March 15 and September 15 prior to and including the later of March 15, 2012 and the Stock Purchase Date, commencing September 15, 2007, and (ii) quarterly in arrears for each March 15, June 15, September 15 and December 15 after the later of March 15, 2012 and the Stock Purchase Date (each a "***Distribution Date***"), and on the Stock Purchase Date if not otherwise a regular Distribution Date, to the Person in whose name the Preferred HITS is registered at the close of business on the regular record date for such installment, which will be the last day of the month immediately preceding the month in which the Distribution Date falls. Distributions shall be cumulative for each Regular Distribution Date to and including the Stock Purchase Date and non-cumulative thereafter. The Trust will make Distributions on the Preferred HITS only to the extent it has received payments from the Sponsor on the Corresponding Assets. The Sponsor has the right to defer payments on the Corresponding Assets from time to time and in the event of such deferral, Distributions will also be deferred for the same period.

THE PREFERRED HITS SHALL BE REDEEMABLE AS PROVIDED IN THE DECLARATION.

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this instrument, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM:	**as tenants in common**
UNIF GIFT MIN ACT:	Custodian (cust)(minor) Under Uniform Gifts to Minors Act of
TENANT:	as tenants by the entireties
JT TEN:	as joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used though not in the above list.

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto

(Please insert Social Security or Taxpayer I.D.
or other Identifying Number of Assignee)

(Please print or type name and address including Postal Zip Code of Assignee)

the within Preferred HITS Certificates and all rights thereunder, hereby irrevocably constituting and appointing attorney , to transfer said Preferred HITS Certificates on the books of BAC Capital Trust XIV with full power of substitution in the premises.

Dated:	**Signature:**
	NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Preferred HITS Certificates in every particular, without alteration or enlargement or any change whatsoever.

Signature Guarantee:

FORM OF SPLITTING NOTICE AND REQUEST

The Bank of New York Trust Company, N.A.

as Collateral Agent and Securities Registrar

10161 Centurion Parkway, 2nd Floor

Jacksonville, Florida 32256

Attention: Corporate Trust Administration

Re: Preferred HITS of BAC Capital Trust XIV

The undersigned Holder hereby notifies you pursuant to Section 5.13(b) of the Amended and Restated Declaration of Trust, dated as of February 16, 2007, of BAC Capital Trust XIV (the "Declaration"), among Bank of America Corporation, as Sponsor, The Bank of New York, as Property Trustee, The Bank of New York, as Delaware Trustee, the Regular Trustees (as named therein) and the several Holders of the Trust Securities, and Section 6.02 of the Collateral Agreement, that the Holder:

(i) is depositing the appropriate Qualifying Treasury Securities with The Bank of New York Trust Company, N.A., as Collateral Agent, for deposit in the Collateral Account,

(ii) is transferring $ Liquidation Amount of the related Preferred HITS to the Securities Registrar in connection with an Exchange of such Preferred HITS and Qualifying Treasury Securities for a Like Amount of Treasury HITS and Corporate HITS, and

(iii) hereby requests the delivery to the Holder of such Treasury HITS and Corporate HITS.

All capitalized terms used herein that are defined in the Declaration have the meaning set forth therein. The undersigned Holder has paid all applicable fees and expenses relating to such Exchange.

Date:	**Signature Guarantee:**
Please print name and address of Registered Holder:	
Name:	Social Security or other Taxpayer Identification Number, if any:
Address:	

FORM OF NOTICE OF CONTINGENT EXCHANGE ELECTION

The Bank of New York Trust Company, N.A.

as Collateral Agent and Securities Registrar

10161 Centurion Parkway, 2nd Floor

Jacksonville, Florida 32256

Attention: Corporate Trust Administration

Re: Preferred HITS of BAC Capital Trust XIV

The undersigned Holder hereby notifies you pursuant to Section 5.14(d) of the Amended and Restated Declaration of Trust, dated as of February 16, 2007, of BAC Capital Trust XIV (the "Declaration"), among Bank of America Corporation, as Sponsor, The Bank of New York, as Property Trustee, The Bank of New York, as Delaware Trustee, the Regular Trustees (as named therein) and the several Holders of the Trust Securities, and Section 8.02 of the Collateral Agreement, that the Holder:

(i) is depositing the appropriate Qualifying Treasury Securities with The Bank of New York Trust Company, N.A., as Collateral Agent, for deposit in the Collateral Account,

(ii) is transferring $ Liquidation Amount of the related Preferred HITS to the Securities Registrar in connection with a Contingent Exchange Election of such Preferred HITS and Qualifying Treasury Securities for a Like Amount of Treasury HITS and Corporate HITS, and

(iii) hereby requests the delivery to the Holder of such Treasury HITS and Corporate HITS if the upcoming Remarketing is Successful, it being understood that if such Remarketing is not Successful, this Notice shall be disregarded and the Collateral Agent shall return such Qualifying Treasury Securities to the Holder promptly after the Remarketing.

All capitalized terms used herein that are defined in the Declaration have the meaning set forth therein. The undersigned Holder has paid all applicable fees and expenses relating to such Contingent Exchange Election.

Date:	**Signature Guarantee:**
Please print name and address of Registered Holder:	
Name:	Social Security or other Taxpayer Identification Number, if any:
Address:	

{TO BE ATTACHED TO GLOBAL CERTIFICATES}

SCHEDULE OF INCREASES AND DECREASES IN GLOBAL CERTIFICATE

The following increases or decreases in this Global Certificate have been made:

Amount of increase in Number of Preferred HITS evidenced by this Global Certificate	Amount of decrease in Number of Preferred HITS evidenced by this Global Certificate	Number of Preferred HITS evidenced by this Global Certificate following such decrease or increase	Signature of authorized signatory of Securities Registrar

--

Exhibit B

FORM OF TREASURY HITS CERTIFICATE

{*For inclusion in Global Certificates only* – THIS CERTIFICATE IS A GLOBAL CERTIFICATE WITHIN THE MEANING OF THE DECLARATION HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY (THE "DEPOSITARY") OR ITS NOMINEE. THIS CERTIFICATE IS EXCHANGEABLE FOR CERTIFICATES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE DECLARATION AND NO TRANSFER OF THIS CERTIFICATE (OTHER THAN A TRANSFER OF THIS CERTIFICATE AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY 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, IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENTAL AGENCY AND INVOLVES INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF PRINCIPAL.

No. _____ **Number of Treasury HITS:** _____

CUSIP No.: 05518VAB1

ISIN: US05518VAB18

BAC Capital Trust XIV

Treasury HITS

This Treasury HITS Certificate certifies that **[ ]** is the registered Holder of the number of Treasury HITS set forth above {*for inclusion in Global Certificates only* - or such other number of Treasury HITS reflected in the Schedule of Increases and Decreases in the Global Certificate attached hereto}. Each Treasury HITS represents a beneficial interest in BAC Capital Trust XIV (the "Trust"), having a Liquidation Amount of $1,000. The Treasury HITS 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 as provided in

Section 5.4 of the Declaration (as defined below). The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Treasury HITS are set forth in, and this certificate and the Treasury HITS represented hereby are issued and shall in all respects be subject to the terms and provisions of the Amended and Restated Declaration of Trust of the Trust, dated as of February 16, 2007, as the same may be amended and restated from time to time (the "Declaration"), including the designation of the terms of the Treasury HITS as set forth therein. The Holder is entitled to the benefits of the Guarantee Agreement entered into by the Sponsor and The Bank of New York, as Guarantee Trustee, dated as of February 16, 2007 (the "Guarantee Agreement"). All capitalized terms used herein that are defined in the Declaration have the meaning set forth therein.

Section 5.13(d) of the Declaration provides for the procedures pursuant to which Holders of Corporate HITS and Treasury HITS may exchange them for Preferred HITS and Qualifying Treasury Securities. The form of Recombination Notice and Request required to be delivered in connection therewith is printed on the reverse hereof.

A copy of each of the Declaration and the Guarantee Agreement is available for inspection at the offices of the Property Trustee.

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

IN WITNESS WHEREOF, the Trust acting through one of its Regular Trustees has executed this Treasury HITS Certificate.

BAC CAPITAL TRUST XIV, acting through one of its Regular Trustees

By:
Name:
Date:

CERTIFICATE OF AUTHENTICATION

This certificate represents the Treasury HITS referred to in the within-mentioned Declaration.

Dated:

THE BANK OF NEW YORK TRUST COMPANY, N.A.,

as Securities Registrar
By:
Authorized Signatory

Distributions payable on each Treasury HITS will be set at 0.15% per annum accruing for each Treasury HITS from the Regular Distribution Date immediately preceding its issuance, on a cumulative basis (the "***Coupon Rate***"). The Coupon Rate is payable on the stated liquidation amount of $1,000 per Treasury HITS, such rate being the rate of Contract Payments payable with respect to the Notes to be held by the Property Trustee on behalf of the Trust. In addition, additional Distributions constituting the Treasury HITS Treasury Roll Over Amount as described in the Declaration is also payable on the Treasury HITS. Distributions in arrears will bear interest thereon (to the extent permitted by applicable law) at the Coupon Rate, compounded semi-annually. The amount of Distributions payable for any period will be computed on the basis of a 360-day year and twelve 30-day months.

Except as otherwise described below, Distributions on the Treasury HITS will be cumulative, will accrue from the date of original issuance and will be payable semi-annually in arrears on (i) each March 15 and September 15 commencing the first such date on which Treasury HITS are outstanding (each a "***Distribution Date***") and (ii) the Stock Purchase Date if not otherwise a Distribution Date (*provided*, *however*, that in any event the last Distribution Date for the Treasury HITS shall be the Stock Purchase Date, except to the extent subordinated notes related to deferred interest are outstanding), to the Person in whose name the Treasury HITS is registered at the close of business on the regular record date for such installment, which will be the last day of the month immediately preceding the month in which the Distribution Date falls. The Trust will make Distributions on the Treasury HITS only to the extent it has received payments from the Sponsor on the Corresponding Assets. The Sponsor has the right to defer payments on the Corresponding Assets from time to time and in the event of such deferral, Distributions will also be deferred for the same period.

THE TREASURY HITS SHALL BE REDEEMABLE AS PROVIDED IN THE DECLARATION.

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this instrument, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM:	**as tenants in common**
UNIF GIFT MIN ACT:	_____ Custodian _____ (cust)(minor) Under Uniform Gifts to Minors Act of _____
TENANT:	as tenants by the entireties
JT TEN:	as joint tenants with right of survivorship and not as tenants in common

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto

(Please insert Social Security or Taxpayer I.D.
or other Identifying Number of Assignee)

(Please print or type name and address including Postal Zip Code of Assignee)

the within Treasury HITS Certificates and all rights thereunder, hereby irrevocably constituting and appointing attorney , to transfer said Treasury HITS Certificates on the books of BAC Capital Trust XIV, with full power of substitution in the premises.

Dated:	**Signature**
	NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Treasury HITS Certificates in every particular, without alteration or enlargement or any change whatsoever.

Signature Guarantee:

FORM OF RECOMBINATION NOTICE AND REQUEST

The Bank of New York Trust Company, N.A.

as Collateral Agent and Securities Registrar

10161 Centurion Parkway, 2nd Floor

Jacksonville, Florida 32256

Attention: Corporate Trust Administration

Re: Treasury HITS and Corporate HITS of BAC Capital Trust XIV

The undersigned Holder hereby notifies you pursuant to Section 5.13(d) of the Amended and Restated Declaration of Trust, dated as of February 16, 2007, of BAC Capital Trust XIV (the "Declaration"), among Bank of America Corporation, as Sponsor, The Bank of New York, as Property Trustee, The Bank of New York, as Delaware Trustee, the Regular Trustees (as named therein) and the several Holders of the Trust Securities, and Section 6.03 of the Collateral Agreement, that the Holder:

(i) is transferring $_ Liquidation Amount of Treasury HITS and Corporate HITS in connection with an Exchange of such Treasury HITS and Corporate HITS for a Like Amount of Preferred HITS and Qualifying Treasury Securities,

(ii) hereby requests the Collateral Agent to release from the Pledge and deliver to the Holder Qualifying Treasury Securities in a principal amount equal to such Liquidation Amount, and

(iii) hereby requests the delivery to the Holder of such Preferred HITS of a Like Amount.

All capitalized terms used herein that are defined in the Declaration have the meaning set forth therein. The undersigned Holder has paid all applicable fees and expenses relating to such Exchange.

Date:	**Signature Guarantee:**
Please print name and address of Registered Holder:	
Name:	Social Security or other Taxpayer Identification Number, if any:
Address:	

{TO BE ATTACHED TO GLOBAL CERTIFICATES}

SCHEDULE OF INCREASES AND DECREASES IN GLOBAL CERTIFICATE

The following increases or decreases in this Global Certificate have been made:

Amount of increase in Number of Treasury HITS evidenced by this Global Certificate	Amount of decrease in Number of Treasury HITS evidenced by this Global Certificate	Number of Treasury HITS evidenced by this Global Certificate following such decrease or increase	Signature of authorized signatory of Securities Registrar

--

Exhibit C

Form of Corporate HITS Certificate

{*For inclusion in Global Certificates only* – THIS CERTIFICATE IS A GLOBAL CERTIFICATE WITHIN THE MEANING OF THE DECLARATION HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY (THE "DEPOSITARY") OR ITS NOMINEE. THIS CERTIFICATE IS EXCHANGEABLE FOR CERTIFICATES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE DECLARATION AND NO TRANSFER OF THIS CERTIFICATE (OTHER THAN A TRANSFER OF THIS CERTIFICATE AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY 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, IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENTAL AGENCY AND INVOLVES INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF PRINCIPAL.

No. _____ **Number of Corporate HITS:** _____

CUSIP No.: 00518VAC9

ISIN: US05518VAC90

BAC Capital Trust XIV

Corporate HITS

This Corporate HITS Certificate certifies that **[ ]** is the registered Holder of the number of Corporate HITS set forth above {*for inclusion in Global Certificates only* - or such other number of Corporate HITS reflected in the Schedule of Increases and Decreases in the Global Certificate attached hereto}. Each Corporate HITS represents a beneficial interest in BAC Capital Trust XIV (the "Trust"), having a Liquidation Amount of $1,000. The Corporate HITS 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 as provided in

Section 5.4 of the Declaration (as defined below). The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Corporate HITS are set forth in, and this certificate and the Corporate HITS represented hereby are issued and shall in all respects be subject to the terms and provisions of the Amended and Restated Declaration of Trust of the Trust, dated as of February 16, 2007, as the same may be amended and restated from time to time (the "Declaration"), including the designation of the terms of the Preferred HITS as set forth therein. The Holder is entitled to the benefits of the Guarantee Agreement entered into by the Sponsor and The Bank of New York, as Guarantee Trustee, dated as of February 16, 2007 (the "Guarantee Agreement"). All capitalized terms used herein that are defined in the Declaration have the meaning set forth therein.

Section 5.13(d) of the Declaration provides for the procedures pursuant to which Holders of Corporate HITS and Treasury HITS may exchange Corporate HITS and Treasury HITS for Preferred HITS and Qualifying Treasury Securities and Section 5.14(f) of the Declaration provides for the procedures pursuant to which Holders of Corporate HITS may elect to exchange Corporate HITS in the event a Remarketing is Successful. The forms of Recombination Notice and Request and Notice of Contingent Disposition Election required to be delivered in connection therewith are printed on the reverse hereof.

A copy of each of the Declaration and the Guarantee Agreement is available for inspection at the offices of the Property Trustee.

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

IN WITNESS WHEREOF, the Trust acting through one of its Regular Trustees has executed this Corporate HITS Certificate.

BAC CAPITAL TRUST XIV, acting through one of its Regular Trustees

By:
Name:
Date:

CERTIFICATE OF AUTHENTICATION

This certificate represents the Corporate HITS referred to in the within-mentioned Declaration.

Dated:

THE BANK OF NEW YORK TRUST COMPANY, N.A.,

as Securities Registrar
By:
Authorized Signatory

Distributions payable on each Corporate HITS will be set at (i) with respect to the period from the Closing Date to but not including the Remarketing Settlement Date for a Successful Remarketing or, in the event of a Failed Remarketing, the Stock Purchase Date, 5.48% per annum (calculated on a 30/360 Basis), and (ii) thereafter for so long as Corporate HITS remain outstanding, the rate per annum corresponding to interest payments by the Corporation on the Notes (the "***Coupon Rate***"). The Coupon Rate is payable on the stated liquidation amount of $1,000 per Corporate HITS, 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 will bear interest thereon (to the extent permitted by applicable law) at the Coupon Rate, compounded semi-annually. The amount of Distributions payable for any period will be computed on the basis of (a) for periods prior to the later of March 15, 2012 and the Stock Purchase Date, a 360-day year of twelve 30-day months and (b) for periods beginning on or after such date, a 360-day year and the number of days actually elapsed.

Except as otherwise described below, Distributions on the Corporate HITS will be cumulative, will accrue from the date of original issuance and will be payable semi-annually in arrears on (i) each March 15 and September 15, commencing on the later of the first such date on which Corporate HITS are Outstanding and September 15, 2007 and continuing through and including the last such date to occur prior to the Remarketing Settlement Date for a Successful Remarketing, and (ii) thereafter for so long as Corporate HITS remain outstanding, each day that is an interest payment date for the Notes (each a "***Distribution Date***"), to the Person in whose name the Corporate HITS is registered at the close of business on the regular record date for such installment, which will be the last day of the month immediately preceding the month in which the Distribution Date falls. The Trust will make Distributions on the Corporate HITS only to the extent it has received payments from the Sponsor on the Corresponding Assets. The Sponsor has the right to defer payments on the Corresponding Assets from time to time and in the event of such deferral, Distributions will also be deferred for the same period.

THE CORPORATE HITS SHALL BE REDEEMABLE AS PROVIDED IN THE DECLARATION.

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this instrument, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM:	**as tenants in common**
UNIF GIT MIN ACT:	_____ Custodian _____ (cust)(minor) Under Uniform Gifts to Minors Act of _____
TENANT:	as tenants by the entireties
JT TEN:	as joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used though not in the above list.

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto

(Please insert Social Security or Taxpayer I.D.
or other Identifying Number of Assignee)

(Please print or type name and address including Postal Zip Code of Assignee)

the within Corporate HITS Certificates and all rights thereunder, hereby irrevocably constituting and appointing attorney , to transfer said Corporate HITS Certificates on the books of BAC Capital Trust XIV, with full power of substitution in the premises.

Dated:	**Signature**
	NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Corporate HITS Certificates in every particular, without alteration or enlargement or any change whatsoever.

Signature Guarantee:

FORM OF RECOMBINATION NOTICE AND REQUEST

The Bank of New York Trust Company, N.A.

as Collateral Agent and Securities Registrar

10161 Centurion Parkway, 2nd Floor

Jacksonville, Florida 32256

Attention: Corporate Trust Administration

Re: Treasury and Corporate HITS of BAC Capital Trust XIV

The undersigned Holder hereby notifies you pursuant to Section 5.13(d) of the Amended and Restated Declaration of Trust, dated as of February 16, 2007, of BAC Capital Trust XIV (the "Declaration"), among Bank of America Corporation, as Sponsor, The Bank of New York, as Property Trustee, The Bank of New York, as Delaware Trustee, the Regular Trustees (as named therein) and the several Holders of the Trust Securities, and Section 6.03(a) of the Collateral Agreement, that the Holder:

(i) is transferring $ Liquidation Amount of Treasury HITS and Corporate HITS in connection with an Exchange of such Treasury HITS and Corporate HITS for a Like Amount of Preferred HITS and Qualifying Treasury Securities,

(ii) hereby requests the Collateral Agent to release from the Pledge and deliver to the Holder Qualifying Treasury Securities in a principal amount equal to such Liquidation Amount, and

(iii) hereby requests the delivery to the Holder of such Preferred HITS of a Like Amount.

All capitalized terms used herein that are defined in the Declaration have the meaning set forth therein. The undersigned Holder has paid all applicable fees and expenses relating to such Exchange.

Date:	**Signature Guarantee:**
Please print name and address of Registered Holder:	
Name:	Social Security or other Taxpayer Identification Number, if any:
Address:	

FORM OF NOTICE OF CONTINGENT DISPOSITION ELECTION

The Bank of New York Trust Company, N.A.

as Collateral Agent and Securities Registrar

10161 Centurion Parkway, 2nd Floor

Jacksonville, Florida 32256

Attention: Corporate Trust Administration

Re: Corporate HITS of BAC Capital Trust XIV

The undersigned Holder hereby notifies you pursuant to Section 5.14(f) of the Amended and Restated Declaration of Trust, dated as of February 16, 2007, of BAC Capital Trust XIV (the "Declaration"), among Bank of America Corporation, as Sponsor, The Bank of New York, as Property Trustee, The Bank of New York, as Delaware Trustee, the Regular Trustees (as named therein) and the several Holders of the Trust Securities, and Section 8.03 of the Collateral Agreement, that the Holder:

(i) is transferring $ Corporate HITS to the Securities Registrar, and

(ii) hereby requests the payment to the Holder, if the upcoming Remarketing is Successful, of an amount in cash for each such Corporate HITS equal to the proceeds of the sale of $1,000 principal amount of Notes, it being understood that if such Remarketing is not Successful, this Notice shall be disregarded.

All capitalized terms used herein that are defined in the Declaration have the meaning set forth therein. The undersigned Holder has paid all applicable fees and expenses relating to such Contingent Disposition Election.

Date:	**Signature Guarantee:**
Please print name and address of Registered Holder:	
Name:	Social Security or other Taxpayer Identification Number, if any:
Address:	

{TO BE ATTACHED TO GLOBAL CERTIFICATES}

SCHEDULE OF INCREASES AND DECREASES IN GLOBAL CERTIFICATE

The following increases or decreases in this Global Certificate have been made:

Amount of increase in Number of Corporate HITS evidenced by this Global Certificate	Amount of decrease in Number of Corporate HITS evidenced by this Global Certificate	Number of Corporate HITS evidenced by this Global Certificate following such decrease or increase	Signature of authorized signatory of Securities Registrar

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Schedule I

Reference Dealers

Banc of America Securities LLC

Bear, Stearns & Co. Inc.

Deutsche Bank

UBS Investment Bank

Schedule II

Contact Persons for Confirmation

Name	Phone Number
Richard L. Nichols, Jr.	(704) 386-9015
Ann J. Travis	(704) 386-7796
B. Kenneth Burton, Jr.	(704) 387-3776
Darrin B. McCaskill	(704) 387-5078
Susan H. McCarver	(704) 387-0558
Tina D. Gonzalez	(904) 998-4732

Exhibit 99.1

REPLACEMENT CAPITAL COVENANT

Replacement Capital Covenant, dated as of February 16, 2007 (this "Replacement Capital Covenant"), by Bank of America Corporation, a Delaware corporation (together with its successors and assigns, the "Corporation"), in favor of and for the benefit of each Covered Debtholder (as defined below).

Recitals

A. On the date hereof, BAC Capital Trust XIII, a Delaware statutory trust (the "Trust") having the Corporation as its grantor, is issuing 700,000 of its "Floating Rate Preferred Hybrid Income Term Securities", or "Preferred HITS", having a stated amount of $1,000 per Preferred HITS and $700,000,000 in the aggregate. Each Preferred HITS corresponds to (1) $1,000 principal amount of "Remarketable Floating Rate Junior Subordinated Notes due 2043", or "Junior Subordinated Notes" issued pursuant to the thirteenth supplemental indenture between the Corporation and the trustee named therein (the "Supplemental Indenture"), owned by the Trust and (2) a 1/100th interest in a "Stock Purchase Contract" pursuant to which the Trust is obligated to purchase, and the Corporation is obligated to sell, on the "Stock Purchase Date" determined pursuant to the Stock Purchase Contract, one share of the Corporation's Floating Rate Non-Cumulative Preferred Stock, Series F, $100,000 liquidation preference per share (the "Preferred Stock"; the shares of Preferred Stock covered by all of the Stock Purchase Contracts owned by the Trust, collectively, the "Shares" and, together with the Preferred HITS, the "Treasury HITS" and the "Corporate HITS", each as defined in the Prospectus Supplement referred to in Recital B, the "Securities").

B. This Replacement Capital Covenant is the "Replacement Capital Covenant" referred to in the Prospectus Supplement, dated February 12, 2007 (the "Prospectus Supplement"), relating to, among other securities, the Securities.

C. The Corporation is entering into and disclosing the content of this Replacement Capital Covenant in the manner provided below with the intent that the covenants provided for in this Replacement Capital Covenant be enforceable by each Covered Debtholder and that the Corporation be estopped from disregarding the covenants in this Replacement Capital Covenant, in each case to the fullest extent permitted by applicable law.

D. The Corporation acknowledges that reliance by each Covered Debtholder upon the covenants in this Replacement Capital Covenant is reasonable and foreseeable by the Corporation and that, were the Corporation to disregard its covenants in this Replacement Capital Covenant, each Covered Debtholder would have sustained an injury as a result of its reliance on such covenants.

NOW, THEREFORE, the Corporation hereby covenants and agrees as follows in favor of and for the benefit of each Covered Debtholder.

SECTION 1. Definitions. Capitalized terms used in this Replacement Capital Covenant (including in the Recitals) have the meanings set forth in Schedule I hereto.

SECTION 2. Limitations on Redemption and Purchase of Securities. The Corporation hereby promises and covenants to, and for the benefit of, each Covered Debtholder that neither the Corporation, nor any Subsidiary of the Corporation, shall redeem or purchase (a) any of the Securities prior to the Stock Purchase Date or (b) the Preferred HITS or Shares on or after the Stock Purchase Date, except in either case to the extent that (x) the Corporation has obtained the prior approval of the Federal Reserve if such approval is then required under the Federal Reserve's capital guidelines applicable to bank holding companies and (y) the applicable redemption or purchase price does not exceed the sum of the following amounts:

(i) 133.33% of the aggregate amount of the net cash proceeds the Corporation and its Subsidiaries have received within a Measurement Period (without double counting proceeds received in any prior Measurement Period) from the sale of Common Stock and rights to acquire Common Stock to Persons other than the Corporation and its Subsidiaries; plus

(ii) 100% of the aggregate amount of the net cash proceeds the Corporation and its Subsidiaries have received within a Measurement Period (without double counting proceeds received in any prior Measurement Period) from the sale of Mandatorily Convertible Preferred Stock or Qualifying Non-Cumulative Perpetual Preferred Stock to Persons other than the Corporation and its Subsidiaries; plus

(iii) 100% of the aggregate amount of the net cash proceeds the Corporation and its Subsidiaries have received within a Measurement Period (without double counting proceeds received in any prior Measurement Period) from the sale of REIT Preferred Securities to Persons other than the Corporation and its Subsidiaries; plus

(iv) 100% of the aggregate amount of the net cash proceeds the Corporation and its Subsidiaries have received within a Measurement Period (without double counting proceeds received in any prior Measurement Period) from the sale of Qualifying Capital Securities to Persons other than the Corporation and its Subsidiaries;

provided that, in the case of any such redemption or purchase prior to the Stock Purchase Date, such securities qualify as Tier 1 capital of the Corporation under the risk-based guidelines of the Federal Reserve and are not "restricted core capital elements" under such guidelines.

SECTION 3. Covered Debt. (a) The Corporation represents and warrants that the Initial Covered Debt is Eligible Debt.

(b) On or during the 30-day period immediately preceding any Redesignation Date with respect to the Covered Debt then in effect, the Corporation shall identify the series of Eligible Debt that will become the Covered Debt on and after such Redesignation Date in accordance with the following procedures:

(i) the Corporation shall identify each series of its and its Depository Institution Subsidiaries' then outstanding long-term indebtedness for money borrowed that is Eligible Debt;

(ii) if only one series of the Corporation's then outstanding long-term indebtedness for money borrowed is Eligible Debt, such series shall become the Covered Debt commencing on the related Redesignation Date;

(iii) if the Corporation has more than one outstanding series of long-term indebtedness for money borrowed that is Eligible Debt, then the Corporation shall identify the series that has the latest occurring final maturity date as of the date the Corporation is applying the procedures in this Section 3(b) and such series shall become the Covered Debt on the related Redesignation Date;

(iv) if the Corporation has no outstanding series of long-term indebtedness for money borrowed that is Eligible Debt, and its Largest Depository Institution Subsidiary has only one outstanding series of long-term indebtedness for money borrowed that is Eligible Debt, such series shall become the Covered Debt commencing on the related Redesignation Date;

(v) if the Corporation has no outstanding series of long-term indebtedness for money borrowed that is Eligible Debt, but its Largest Depository Institution Subsidiary has more than one outstanding series of long-term indebtedness for money borrowed that is Eligible Debt, then the Corporation shall identify the series that has the latest occurring final maturity date as of the date the Corporation is applying the procedures in this Section 3(b) and such series shall become the Covered Debt on the related Redesignation Date;

(vi) the series of outstanding long-term indebtedness for money borrowed that is determined to be Covered Debt pursuant to clause (ii), (iii), (iv) or (v) above shall be the Covered Debt for purposes of this Replacement Capital Covenant for the period commencing on the related Redesignation Date and continuing to but not including the Redesignation Date as of which a new series of outstanding long-term indebtedness is next determined to be the Covered Debt pursuant to the procedures set forth in this Section 3(b); and

(vii) in connection with the identification of a new series of Covered Debt, the Corporation shall give notice as provided for in Section 3(c) within the time frame provided for in such section.

(c) Notice. In order to give effect to the intent of the Corporation described in Recital C, the Corporation covenants that (i) simultaneously with the execution of this Replacement Capital Covenant or as soon as practicable after the date hereof, it shall (x) give notice to the Holders of the Initial Covered Debt, in the manner provided in the indenture relating to the Initial Covered Debt, of this Replacement Capital Covenant and the rights granted to such Holders hereunder and (y) file a copy of this Replacement Capital Covenant with the Commission as an exhibit to a Current Report on Form 8-K under the Securities Exchange Act; (ii) so long as the Corporation is a reporting company under the Securities Exchange Act, the Corporation will include in each annual report on Form 10-K filed with the Commission under the Securities Exchange Act a description of the covenant set forth in Section 2 and identify the series of long-term indebtedness for borrowed money that is Covered Debt as of the filing date of such Form

10-K; (iii) if a series of the Corporation's or one of its Depository Institution Subsidiary's long-term indebtedness for money borrowed (1) becomes Covered Debt or (2) ceases to be Covered Debt, the Corporation shall give notice of such occurrence within 30 days to the holders of such long-term indebtedness for money borrowed in the manner provided for in the indenture, fiscal agency agreement or other instrument under which such long-term indebtedness for money borrowed was issued and report such change in a Current Report on Form 8-K including or incorporating by reference this Replacement Capital Covenant, and the Corporation's next quarterly report on Form 10-Q or annual report on Form 10-K, as applicable; (iv) if, and only if, the Corporation ceases to be a reporting company under the Securities Exchange Act, the Corporation shall post on its website the information otherwise required to be included in Securities Exchange Act filings pursuant to clauses (ii) and (iii) of this Section 3(c); and (v) promptly upon request by any Holder of Covered Debt, the Corporation shall provide such Holder with an executed copy of this Replacement Capital Covenant.

SECTION 4. Termination, Amendment and Waiver. (a) The obligations of the Corporation pursuant to this Replacement Capital Covenant shall remain in full force and effect until the earlier date (the "Termination Date") to occur of (i) the date, if any, on which the Holders of a majority by principal amount of the then-effective series of Covered Debt consent or agree in writing to the termination of this Replacement Capital Covenant and the obligations of the Corporation hereunder and (ii) the date on which neither the Corporation nor any of its Depository Institution Subsidiaries has any series of outstanding Eligible Senior Debt or Eligible Subordinated Debt (in each case without giving effect to the rating requirement in clause (b) of the definition of each such term). Moreover, if an event of default under the Supplemental Indenture resulting in an acceleration of the Junior Subordinated Notes occurs, this Replacement Capital Covenant shall, without any further action, immediately terminate upon such acceleration. From and after the Termination Date, the obligations of the Corporation pursuant to this Replacement Capital Covenant shall be of no further force and effect.

(b) This Replacement Capital Covenant may be amended or supplemented from time to time by a written instrument signed by the Corporation with the consent of the Holders of a majority by principal amount of the then-effective series of Covered Debt, provided that this Replacement Capital Covenant may be amended or supplemented from time to time by a written instrument signed only by the Corporation (and without the consent of the Holders of the then-effective series of Covered Debt) if any of the following apply (it being understood that any such amendment or supplement may fall into one or more of the following): (i) the effect of such amendment or supplement is solely to impose additional restrictions on, or to eliminate certain of, the types of securities qualifying as Replacement Capital Securities, and an officer of the Corporation has delivered to the Holders of the then effective series of Covered Debt in the manner provided for in the indenture, fiscal agency agreement or other instrument with respect to such Covered Debt a written certificate to that effect; (ii) such amendment eliminates Common Stock or Mandatorily Convertible Preferred Stock (but only to the extent exchangeable for Common Stock) as Replacement Capital Securities, if in the case of this clause (ii) the Corporation has been advised in writing by a nationally recognized independent accounting firm that there is more than an insubstantial risk that the failure to do so would result in a reduction in the Corporation's earnings per share as calculated for financial reporting purposes or (iii) such amendment or supplement is not adverse to the Holders of the then-effective series of Covered Debt and an officer of the Corporation has delivered to the Holders of the then-effective series of

Covered Debt in the manner provided for in the indenture, fiscal agency agreement or other instrument with respect to such Covered Debt a written certificate stating that, in his or her determination, such amendment or supplement is not adverse to the Holders of the then-effective series of Covered Debt.

(c) For purposes of Sections 4(a) and 4(b), the Holders whose consent or agreement is required to terminate, amend or supplement the obligations of the Corporation under this Replacement Capital Covenant shall be the Holders of the then-effective Covered Debt as of a record date established by the Corporation that is not more than 30 days prior to the date on which the Corporation proposes that such termination, amendment or supplement becomes effective.

SECTION 5. Miscellaneous. (a) This Replacement Capital Covenant shall be governed by and construed in accordance with the laws of the State of New York.

(b) This Replacement Capital Covenant shall be binding upon the Corporation and its successors and assigns and shall inure to the benefit of the Covered Debtholders as they exist from time-to-time (it being understood and agreed by the Corporation that any Person who is a Covered Debtholder at the time such Person acquires, holds or sells Covered Debt shall retain its status as a Covered Debtholder for so long as the series of long-term indebtedness for borrowed money owned by such Person is Covered Debt and, if such Person initiates a claim or proceeding to enforce its rights under this Replacement Capital Covenant after the Corporation has violated its covenants in Section 2 and before the series of long-term indebtedness for money borrowed held by such Person is no longer Covered Debt, such Person's rights under this Replacement Capital Covenant shall not terminate by reason of such series of long-term indebtedness for money borrowed no longer being Covered Debt). Other than the Covered Debtholders as provided in the previous sentence, no other Person shall have any rights under this Replacement Capital Covenant or be deemed a third-party beneficiary of this Replacement Capital Covenant. In particular, no holder of the Junior Subordinated Notes is a third-party beneficiary of this Replacement Capital Covenant, it being understood that such holders may have rights under the Supplemental Indenture.

(c) All demands, notices, requests and other communications to the Corporation under this Replacement Capital Covenant shall be deemed to have been duly given and made if in writing and (i) if served by personal delivery upon the Corporation, on the day so delivered (or, if such day is not a Business Day, the next succeeding Business Day), (ii) if delivered by registered post or certified mail, return receipt requested, or sent to the Corporation by a national or international courier service, on the date of receipt by the Corporation (or, if such date of receipt is not a Business Day, the next succeeding Business Day), or (iii) if sent by telecopier, on the day telecopied, or if not a Business Day, the next succeeding Business Day, provided that the telecopy is promptly confirmed by telephone confirmation thereof, and in each case to the Corporation at the address set forth below, or at such other address as the Corporation may thereafter notify to Covered Debtholders or post on its website as the address for notices under this Replacement Capital Covenant:

Bank of America Corporation
Corporate Treasury – Securities Administration

NC1-007-07-06
100 North Tryon Street
Charlotte, NC 28255
Attention: Corporate Treasury – Securities Administration
Telephone: 1 (866) 804-5241
Facsimile: (704) 386-0270
Email: securities.administration@bankofamerica.com

[*Signature page on next page*]

IN WITNESS WHEREOF, the Corporation has caused this Replacement Capital Covenant to be executed by its duly authorized officer, as of the day and year first above written.

BANK OF AMERICA CORPORATION

By: /s/ Ann J. Travis
Name: Ann J. Travis
Title: Senior Vice President

Definitions

"***Alternative Payment Mechanism***" means, with respect to any securities or combination of securities (together in this definition, "such securities"), provisions in the related transaction documents that require the Corporation or its Subsidiaries to issue (or use commercially reasonable efforts to issue) one or more types of APM Qualifying Securities raising eligible proceeds at least equal to the deferred Distributions on such securities and apply the proceeds to pay unpaid Distributions on such securities, commencing on the earlier of (x) the first Distribution Date after commencement of a deferral period on which the Corporation pays current Distributions on such securities and (y) the fifth anniversary of the commencement of such deferral period, and that:

(a) define "eligible proceeds" to mean, for purposes of such Alternative Payment Mechanism, the net proceeds (after underwriters' or placement agents' fees, commissions or discounts and other expenses relating to the issuance or sale of the relevant securities, where applicable, and including the fair market value of property received by the Corporation or any of its Subsidiaries as consideration for such securities) that the Corporation has received during the 180 days prior to the related Distribution Date from the issuance of APM Qualifying Securities, up to the Preferred Cap (as defined in paragraph (f) below) in the case of APM Qualifying Securities that are Qualifying Non-Cumulative Perpetual Preferred Stock;

(b) permit the Corporation to pay current Distributions on any Distribution Date out of any source of funds but (x) require the Corporation to pay deferred Distributions only out of eligible proceeds and (y) prohibit the Corporation from paying deferred Distributions out of any source of funds other than eligible proceeds, unless (if the Corporation elects to so provide in the terms of such securities) otherwise required at the time by the Federal Reserve;

(c) if deferral of Distributions continues for more than one year (or such shorter period as provided for in the terms of such securities), require the Corporation or its Subsidiaries not to redeem, repay or repurchase any APM Qualifying Securities or any securities of the Corporation that on a bankruptcy or liquidation of the Corporation rank pari passu with or junior to such securities until at least one year after all deferred Distributions have been paid;

(d) notwithstanding clause (b) of this definition, if the Federal Reserve disapproves of the Corporation's or its Subsidiaries' sale of APM Qualifying Securities, may (if the Corporation elects to so provide in the term of such securities) permit the Corporation to pay deferred Distributions from any source without a breach of its obligations under the transaction documents;

(e) if the Federal Reserve does not disapprove the Corporation's issuance and sale of APM Qualifying Securities but disapproves the use of the proceeds thereof to pay deferred Distributions, may (if the Corporation elects to so provide in the terms of such securities) permit the Corporation to use such proceeds for other purposes and to continue to defer Distributions without a breach of its obligations under the transaction documents; and

(f) limit the obligation of the Corporation or its Subsidiaries to issue (or use commercially reasonable efforts to issue) APM Qualifying Securities up to:

(i) in the case of APM Qualifying Securities that are Common Stock or rights to purchase Common Stock, either (i) during the first five years of any deferral period or (ii) with respect to deferred Distributions attributable to the first five years of any deferral period (provided that such limitation shall not apply after the sixth anniversary of the commencement of any deferral period) an amount from the issuance thereof pursuant to the Alternative Payment Mechanism (including at any point in time from all prior issuances thereof pursuant to the Alternative Payment Mechanism) equal to 2% of the product of the average of the current stock market prices of the Common Stock on the ten consecutive trading days ending on the fourth trading day immediately preceding the date of issuance multiplied by the total number of issued and outstanding shares of Common Stock as of the date of the Corporation's most recent publicly available consolidated financial statements (the "Common Cap"), provided (and it being understood) that (x) in the case of clauses (i) and (ii) above, once the Corporation reaches the Common Cap, until the Common Cap ceases to apply the Corporation will not be required to issue more Common Stock or rights to purchase Common Stock under the Alternative Payment Mechanism with respect to deferred Distributions attributable to the first five years of a deferral period even if the amount referred to in this subclause (i) subsequently increases because of a subsequent increase in the current market price of Common Stock or the number of outstanding shares of Common Stock, and (y) in the case of clause (ii), the Common Cap shall cease to apply to such deferral period by a date (as specified in the related transaction documents) which shall be not later than the ninth anniversary of the commencement of such deferral period;

(ii) in the case of APM Qualifying Securities that are Qualifying Non-Cumulative Preferred Stock, an amount from the issuance thereof pursuant to the related Alternative Payment Mechanism (including at any point in time from all prior issuances thereof pursuant to such Alternative Payment Mechanism) equal to 25% of the liquidation or principal amount of the securities that are the subject of the related Alternative Payment Mechanism (the "Preferred Cap");

(g) in the case of securities other than Non-Cumulative Perpetual Preferred Stock, include a Bankruptcy Claim Limitation Provision; and

(h) permit the Corporation, at its option, to provide that if the Corporation is involved in a merger, consolidation, amalgamation, binding share exchange or conveyance, transfer or lease of assets substantially as an entirety to any other person or a similar transaction (a "*business combination*") where immediately after the consummation of the business combination more than 50% of the surviving or resulting entity's voting stock is owned by the shareholders of the other party to the business combination, then clauses (a), (b) and (c) above will not apply to the extent that any deferral period is terminated on the next interest payment date following the date of consummation of the business combination; provided, however that the surviving entity may pay any deferred and unpaid interest on such next interest payment date or if later, at any time within 90 days following the date of consummation of the business combination;

provided (and it being understood) that:

(a) the Corporation shall not be obligated to issue (or use commercially reasonable efforts to issue) APM Qualifying Securities for so long as a Market Disruption Event has occurred and is continuing;

(b) if, due to a Market Disruption Event or otherwise, the Corporation is able to raise and apply some, but not all, of the eligible proceeds necessary to pay all deferred Distributions on any Distribution Date, the Corporation will apply any available eligible proceeds to pay accrued and unpaid Distributions on the applicable Distribution Date in chronological order subject to the Common Cap, the Preferred Cap, and any maximum issuance cap referred to above, as applicable; and

(c) if the Corporation has outstanding more than one class or series of securities under which it is obligated to sell a type of APM Qualifying Securities and apply some part of the proceeds to the payment of deferred Distributions, then on any date and for any period the amount of net proceeds received by the Corporation from those sales and available for payment of deferred Distributions on such securities shall be applied to such securities on a pro rata basis up to the Common Cap, the Preferred Cap and any maximum issuance cap referred to above, as applicable, in proportion to the total amounts that are due on such securities, or on such other basis as the Federal Reserve may approve.

"***APM Qualifying Securities***" means, with respect to an Alternative Payment Mechanism, or with respect to a Mandatory Trigger Provision, one or more of the following (as designated in the transaction documents for the Qualifying Capital Securities that include an Alternative Payment Mechanism):

(a) Common Stock;

(b) rights to purchase Common Stock; or

(c) Qualifying Non-Cumulative Perpetual Preferred Stock;

provided that if the APM Qualifying Securities for any Alternative Payment Mechanism include both Common Stock and rights to purchase Common Stock, such Alternative Payment Mechanism may permit, but need not require, the Corporation to issue rights to purchase Common Stock.

"***Appropriate Federal Banking Agency***" means, as to a Depository Institution Subsidiary, the Federal bank regulatory agency or authority that is the "appropriate Federal banking agency" (within the meaning of 12 U.S.C. § 1813(q)) with respect to such Depository Institution Subsidiary.

"***Bankruptcy Claim Limitation Provision***" means, with respect to any securities or combination of securities that have an Alternative Payment Mechanism or a Mandatory Trigger Provision (together in this definition, "*securities*"), provisions that, upon any liquidation, dissolution, winding up or reorganization or in connection with any insolvency, receivership or proceeding under any bankruptcy law with respect to the issuer, limit the claim of the holders of

such securities to Distributions that accumulate during (a) any deferral period, in the case of securities that have an Alternative Payment Mechanism or (b) any period in which the Corporation fails to satisfy one or more financial tests set forth in the terms of such securities or related transaction agreements, in the case of securities having a Mandatory Trigger Provision, to:

(i) in the case of securities having an Alternative Payment Mechanism or Mandatory Trigger Provision with respect to which the APM Qualifying Securities do not include Qualifying Non-Cumulative Perpetual Preferred Stock, 25% of the stated or principal amount of such securities then outstanding; and

(ii) in the case of any other securities, the sum of (x) the amount of accumulated and unpaid Distributions (including compounded amounts) that relate to the earliest two years of the portion of the deferral period for which Distributions have not been paid and (y) an amount equal to the excess, if any, of the Preferred Cap over the aggregate amount of net proceeds from the sale of Qualifying Non-Cumulative Perpetual Preferred Stock that the issuer has applied to pay such Distributions pursuant to the Alternative Payment Mechanism or the Mandatory Trigger Provision, *provided* that the holders of such securities are deemed to agree that, to the extent the remaining claim exceeds the amount set forth in subclause (x), the amount they receive in respect of such excess shall not exceed the amount they would have received had such claim ranked *pari passu* with the interests of the holders, if any, of Qualifying Non-Cumulative Perpetual Preferred Stock.

"***Business Day***" means each day other than (a) a Saturday or Sunday or (b) a day on which banking institutions in The City of New York and Charlotte, North Carolina are authorized or required by law or executive order to remain closed.

"***Commission***" means the United States Securities and Exchange Commission.

"***Common Cap***" has the meaning specified in the definition of Alternative Payment Mechanism.

"***Common Stock***" means common stock of the Corporation or its Subsidiaries (including common stock issued pursuant to the Corporation's dividend reinvestment plan and employee benefit plans).

"***Corporation***" has the meaning specified in the introduction to this instrument.

"***Covered Debt***" means (a) at the date of this Replacement Capital Covenant and continuing to but not including the first Redesignation Date, the Initial Covered Debt and (b) thereafter, commencing with each Redesignation Date and continuing to but not including the next succeeding Redesignation Date, the Eligible Debt identified pursuant to Section 3(b) as the Covered Debt for such period.

"***Covered Debtholder***" means each Person (whether a Holder or a beneficial owner holding through a participant in a clearing agency) that buys, holds or sells long-term indebtedness for money borrowed of the Corporation or its Depository Institution Subsidiary during the period that such long-term indebtedness for money borrowed is Covered Debt.

"***Depository Institution Subsidiary***" means Bank of America, N.A. or any successor institution that is a Subsidiary of the Corporation and also a depository institution within the meaning of 12 C.F.R. § 204.2(m).

"***Distribution Date***" means, as to any securities or combination of securities, the dates on which Distributions on such securities are scheduled to be made.

"***Distribution Period***" means, as to any securities or combination of securities, each period from and including a Distribution Date for such securities to but not including the next succeeding Distribution Date for such securities.

"***Distributions***" means, as to a security or combination of securities, dividends, interest or other income distributions to the holders thereof that are not Subsidiaries of the Corporation.

"***Eligible Debt***" means, at any time, Eligible Subordinated Debt or, if no Eligible Subordinated Debt is then outstanding, Eligible Senior Debt.

"***Eligible Senior Debt***" means, at any time in respect of any issuer, each series of outstanding long-term indebtedness for money borrowed of such issuer that (a) upon a bankruptcy, liquidation, dissolution or winding up of the issuer, ranks most senior among the issuer's then outstanding classes of unsecured indebtedness for money borrowed, (b) is then assigned a rating by at least one NRSRO (provided that this clause (b) shall apply on a Redesignation Date only if on such date the issuer has outstanding senior long-term indebtedness for money borrowed that satisfies the requirements of clauses (a), (c) and (d) that is then assigned a rating by at least one NRSRO), (c) has an outstanding principal amount of not less than $100,000,000, (d) was issued through or with the assistance of a commercial or investment banking firm or firms acting as underwriters, initial purchasers or placement or distribution agents, and (e) if issued by a Depository Institution Subsidiary, is fully and unconditionally guaranteed by the Corporation on (I) a subordinated basis or (II) if on the relevant Redesignation Date there is no outstanding debt of a Depository Institution Subsidiary meeting the other requirements set forth above and guaranteed by the Corporation on a subordinated basis but there is outstanding debt of a Depository Institution Subsidiary meeting such requirements and guaranteed on a senior basis, a senior basis. For purposes of this definition as applied to securities with a CUSIP number, each issuance of long-term indebtedness for money borrowed that has (or, if such indebtedness is held by a trust or other intermediate entity established directly or indirectly by the issuer, the securities of such intermediate entity that have) a separate CUSIP number shall be deemed to be a series of the issuer's long-term indebtedness for money borrowed that is separate from each other series of such indebtedness.

"***Eligible Subordinated Debt***" means, at any time in respect of any issuer, each series of the issuer's then-outstanding long-term indebtedness for money borrowed that (a) upon a bankruptcy, liquidation, dissolution or winding up of the issuer, ranks subordinate to the issuer's then outstanding series of unsecured indebtedness for money borrowed that ranks most senior, (b) is then assigned a rating by at least one NRSRO (provided that this clause (b) shall apply on a

Redesignation Date only if on such date the issuer has outstanding subordinated long-term indebtedness for money borrowed that satisfies the requirements in clauses (a), (c) and (d) that is then assigned a rating by at least one NRSRO), (c) has an outstanding principal amount of not less than $100,000,000, (d) was issued through or with the assistance of a commercial or investment banking firm or firms acting as underwriters, initial purchasers or placement or distribution agents, and (e) if issued by a Depository Institution Subsidiary, is fully and unconditionally guaranteed by the Corporation on (I) a subordinated basis or (II) if on the relevant Redesignation Date there is no outstanding debt of a Depository Institution Subsidiary meeting the other requirements set forth above and guaranteed by the Corporation on a subordinated basis but there is outstanding debt of a Depository Institution Subsidiary meeting such requirements and guaranteed on a senior basis, a senior basis. For purposes of this definition as applied to securities with a CUSIP number, each issuance of long-term indebtedness for money borrowed that has (or, if such indebtedness is held by a trust or other intermediate entity established directly or indirectly by the issuer, the securities of such intermediate entity that have) a separate CUSIP number shall be deemed to be a series of the issuer's long-term indebtedness for money borrowed that is separate from each other series of such indebtedness.

"***Federal Reserve***" means (i) the Board of Governors of the Federal Reserve System, as from time to time constituted, or if at any time after the execution of this Agreement the Federal Reserve is not existing and performing the duties now assigned to it, then the body or bodies performing such duties at such time, or the Federal Reserve Bank of Richmond, or (ii) any successor Federal Reserve Bank (or successor body performing such duties) having primary jurisdiction over the Corporation.

"***Holder***" means, as to the Covered Debt then in effect, each holder of such Covered Debt as reflected on the securities register maintained by or on behalf of the Corporation with respect to such Covered Debt.

"***Initial Covered Debt***" means the Corporation's 6 5/8% Junior Subordinated Notes, due 2036.

"***Intent-Based Replacement Disclosure***" means, as to any security or combination of securities, that the Corporation has publicly stated its intention, either in the prospectus or other offering document under which such securities were initially offered for sale or in filings with the Commission made by the Corporation under the Securities Exchange Act prior to or contemporaneously with the issuance of such securities, that the Corporation will redeem or purchase such securities only with the proceeds of replacement capital securities that have terms and provisions at the time of redemption or purchase that are as or more equity-like than the securities then being redeemed or purchased, raised within 180 days prior to the applicable redemption or purchase date. Notwithstanding the use of the term "Intent-Based Replacement Disclosure" in the definitions of "Qualifying Capital Securities" and "Qualifying Non-Cumulative Perpetual Preferred Stock", the requirement in each such definition that a particular security or the related transaction documents include Intent-Based Replacement Disclosure shall be disregarded and given no force or effect for so long as the Corporation is a bank holding company within the meaning of the Bank Holding Company Act of 1956, as amended.

"***Largest Depository Institution Subsidiary***" means, from time to time, the Depository Institution Subsidiary of the Corporation with the greatest total assets that also has outstanding at least one series of Eligible Subordinated Debt; provided, however, that if no Depository Institution Subsidiary of the Corporation has outstanding a series of Eligible Subordinated Debt, this term shall mean the Depository Institution Subsidiary of the Corporation with the greatest total assets that also has outstanding at least one series of Eligible Senior Debt.

"***Mandatorily Convertible Preferred Stock***" means cumulative preferred stock with (a) no prepayment obligation on the part of the issuer thereof, whether at the election of the holders or otherwise, and (b) a requirement that the preferred stock convert into Common Stock of the Corporation within three years from the date of its issuance at a conversion ratio within a range established at the time of issuance of the preferred stock.

"***Mandatory Trigger Provision***" means, as to any security or combination of securities (together in this definition, "securities"), provisions in the terms thereof or of the related transaction agreements that:

(A) require, or at its option in the case of Qualifying Non-Cumulative Perpetual Preferred Stock permit, the issuer of such securities to make payment of Distributions on such securities only pursuant to the issuance and sale of APM Qualifying Securities, within two years of a failure to satisfy one or more financial tests set forth in the terms of such securities or related transaction agreements, in amount such that the net proceeds of such sale are at least equal to the amount of unpaid Distributions on such securities (including without limitation all deferred and accumulated amounts), and in either case require the application of the net proceeds of such sale to pay such unpaid Distributions, provided that if the APM Qualifying Securities issued and sold are Qualifying Non-Cumulative Perpetual Preferred Stock the amount of the net proceeds of Qualifying Non-Cumulative Perpetual Preferred Stock which the issuer may apply to pay such Distributions pursuant to such provision may not exceed 25% of the initial liquidation or principal amount of such securities, (B) prohibit the issuer from repurchasing any APM Qualifying Securities or any securities of the issuer that on a bankruptcy or liquidation rank junior to or pari passu with APM Qualifying Securities prior to the date 180 days after the issuer applies the net proceeds of the sales described in clause (A) to pay such unpaid Distributions in full, and (C) upon any liquidation, dissolution, winding up, reorganization or in connection with any insolvency, receivership or proceeding under any bankruptcy law with respect to the Corporation or its Subsidiaries, limit the claim of the holders of such securities (other than Qualifying Non-Cumulative Perpetual Preferred Stock) to Distributions that accumulate during a period in which the Corporation fails to satisfy one or more financial tests set forth in the terms of such securities or related transaction agreements to (x) 25% of the principal amount of such securities then outstanding in the case of securities not permitting the issuance and sale pursuant to the provisions described in clause (A) above of securities other than Common Stock or rights to acquire Common Stock or (y) two years of accumulated and unpaid Distributions (including compounded amounts thereon) in all other cases. No remedy other than Permitted Remedies will arise by the terms of such securities or related transaction agreements in favor of the holders of such securities as a result of the issuer's failure to pay Distributions because of the Mandatory Trigger Provision or as a result of the issuer's exercise of its right under an Optional Deferral Provision until Distributions have been deferred for one or more Distribution Periods that total together at least ten years.

"***Market Disruption Event***" means the occurrence or existence of any of the following events or sets of circumstances:

(a) the Corporation would be required to obtain the consent or approval of its stockholders or a regulatory body (including, without limitation, any securities exchange) or governmental authority to issue or sell APM Qualifying Securities and such consent or approval has not yet been obtained notwithstanding the Corporation's commercially reasonable efforts to obtain such consent or approval (including, without limitation, failing to obtain approval for such issuance if required by the Federal Reserve after giving notice to the Federal Reserve as required under the Supplemental Indenture);

(b) trading in securities generally on the New York Stock Exchange or on any other national securities exchange or over-the-counter market on which the Common Stock and/or the Corporation's preferred stock is then listed or traded shall have been suspended or the settlement of such trading generally shall have been materially disrupted or minimum prices shall have been established on any such exchange or market by the Commission, by the relevant exchange or by any other regulatory body or governmental body having jurisdiction;

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

(d) an event occurs and is continuing as a result of which the offering document for such offer and sale of APM Qualifying Securities would, in the judgment of the Corporation, 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 and either (a) the disclosure of that event at such time, in the judgment of the Corporation, is not otherwise required by law and would have a material adverse effect on the business of the Corporation or (b) the disclosure relates to a previously undisclosed proposed or pending material business transaction, the disclosure of which would impede the ability of the Corporation to consummate such transaction, provided that no single suspension period contemplated by this paragraph (d) shall exceed 90 consecutive days and multiple suspension periods contemplated by this paragraph (d) shall not exceed an aggregate of 180 days in any 360-day period; or

(e) the Corporation reasonably believes, for reasons other than those referred to in paragraph (d) above, that the offering document for such offer and sale of APM Qualifying Securities would not be in compliance with a rule or regulation of the Commission and the Corporation is unable to comply with such rule or regulation or such compliance is unduly burdensome, provided that no single suspension period contemplated by this paragraph (e) shall exceed 90 consecutive days and multiple suspension periods contemplated by this paragraph (e) shall not exceed an aggregate of 180 days in any 360-day period.

The definition of "Market Disruption Event" as used in any securities or combination of securities that constitute Qualifying Capital Securities may include less than all of the paragraphs outlined above, as determined by the Corporation or its Subsidiaries at the time of issuance of such securities, and in the case of clauses (a), (b) and (c), as applicable to a circumstance where the Corporation would otherwise endeavor to issue preferred stock, shall be limited to circumstances affecting markets where the Corporation's preferred stock trades or where a listing for its trading is being sought.

"***Measurement Date***" means, with respect to any repayment, redemption or purchase of Securities, the date 180 days prior to the delivery of notice of such repayment, redemption or the date of such purchase.

"***Measurement Period***" with respect to any notice date or purchase date means the period (i) beginning on the Measurement Date with respect to such notice date or purchase date and (ii) ending on such notice date or purchase date. Measurement Periods cannot run concurrently.

"***Non-Cumulative***" means, with respect to any securities, that the issuer thereof may elect not to make any number of periodic Distributions without any remedy arising under the terms of the securities or related agreements in favor of the holders, other than one or more Permitted Remedies. Securities that include an Alternative Payment Mechanism shall also be deemed to be Non-Cumulative for all purposes of this Replacement Capital Covenant, other than the definitions of APM Qualifying Securities and Qualifying Non-Cumulative Perpetual Preferred Stock.

"***NRSRO***" means a nationally recognized statistical rating organization within the meaning of Rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act.

"***Optional Deferral Provision***" means, as to any securities or combination of securities (together in this definition, "securities"), a provision in the terms thereof or of the related transaction agreements to the effect that the issuer of such securities may in its sole discretion, or shall in response to a directive or order from the Federal Reserve, defer or skip in whole or in part payment of Distributions on such securities for one or more consecutive Distribution Periods of up to ten years without any remedy other than Permitted Remedies.

"***Other Qualifying Replacement Capital Covenant***" means a replacement capital covenant, as identified by the Corporation's Board of Directors acting in good faith and in its reasonable discretion, (i) entered into by a company that at the time it enters into such replacement capital covenant is a reporting company under the Securities Exchange Act and (ii) that restricts the related issuer from redeeming or purchasing identified securities except out of the proceeds of specified replacement capital securities that have terms and provisions at the time of redemption or purchase that are as or more equity-like than the securities then being redeemed or purchased, raised within 180 days prior to the applicable redemption or purchase date.

"***Permitted Remedies***" means, with respect to any securities, one or more of the following remedies:

(a) rights in favor of the holders of such securities permitting such holders to elect one or more directors of the issuer (including any such rights required by the listing requirements of any stock or securities exchange on which such securities may be listed or traded); and

(b) complete or partial prohibitions on the issuer paying Distributions on or repurchasing common stock or other securities that rank *pari passu* with or junior as to Distributions to such securities for so long as Distributions on such securities, including unpaid Distributions, remain unpaid.

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

"***Preferred Cap***" has the meaning specified in the definition of Alternative Payment Mechanism.

"***Preferred HITS***" has the meaning specified in Recital A.

"***Prospectus Supplement***" has the meaning specified in Recital B.

"***Qualifying Capital Securities***" means securities (other than Common Stock, rights to acquire Common Stock and securities convertible into Common Stock) that (a) qualify as Tier 1 capital of the Corporation under the capital guidelines of the Federal Reserve as then in effect and applicable to bank holding companies and (b) in the determination of the Corporation's Board of Directors, reasonably construing the definitions and other terms of this Replacement Capital Covenant, meet one of the following criteria:

(i) securities issued by the Corporation (including guarantees) or issued by its Subsidiaries that (1) rank*pari passu* with or junior to the Junior Subordinated Notes upon a liquidation, dissolution or winding up of the Corporation, (2) have no maturity or a maturity of at least 60 years, and (3) either (i) are Non-Cumulative and are subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Replacement Capital Covenant or (ii) have a Mandatory Trigger Provision, an Optional Deferral Provision and Intent-Based Replacement Disclosure; or

(ii) securities issued by the Corporation or its Subsidiaries that (1) rank*pari passu* with or junior to the Junior Subordinated Notes upon a liquidation, dissolution or winding up of the Corporation, (2) have no maturity or a maturity of at least 40 years, (3) are subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Replacement Capital Covenant, and (4) have a Mandatory Trigger Provision and Optional Deferral Provision.

It is acknowledged that the Federal Reserve has not approved as a Tier 1 capital instrument for bank holding companies securities containing a Mandatory Trigger Provision that otherwise would be Qualifying Capital Securities and, accordingly, these securities would not constitute Qualifying Capital Securities unless such approval is obtained.

"***Qualifying Non-Cumulative Perpetual Preferred Stock***" means non-cumulative preferred stock of the Corporation that ranks*pari passu* with or junior to all other preferred stock of the Corporation, is perpetual and is subject to either a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Replacement Capital Covenant or has a provision that prohibits us from making any distributions thereon upon our failure to satisfy one or more financial tests set forth therein and is subject to Intent-Based Replacement Disclosure, and in each case as to which the transaction documents provide for no remedies as a consequence of non-payment of Distributions other than Permitted Remedies.

"***Redesignation Date***" means, as to the Covered Debt in effect at any time, the earliest of (a) the date that is two years prior to the final maturity date of such Covered Debt, (b) if the Corporation elects to redeem, or the Corporation or a Subsidiary of the Corporation elects to repurchase, such Covered Debt either in whole or in part with the consequence that after giving effect to such redemption or repurchase the outstanding principal amount of such Covered Debt is less than $100,000,000, the applicable redemption or repurchase date and (c) if such Covered Debt is not Eligible Subordinated Debt of the Corporation, the date on which the Corporation issues long-term indebtedness for money borrowed that is Eligible Subordinated Debt.

"**REIT Preferred Securities**" means non-cumulative perpetual preferred stock of a Subsidiary of a Depository Institution Subsidiary, which may or may not be a "real estate investment trust" ("REIT") within the meaning of Section 856 of the Internal Revenue Code, that is exchangeable for non-cumulative perpetual preferred stock of the Corporation and satisfies the following requirements:

(a) such non-cumulative perpetual preferred stock of a Subsidiary of the Depositary Institution Subsidiary and the related non-cumulative perpetual preferred stock of the Corporation for which it may be exchanged qualifies as Tier 1 capital of a Depository Institution Subsidiary risk-based capital guidelines of the Appropriate Federal Banking Agency and related interpretive guidance of such Agency (for example, in the case of the Office of the Comptroller of the Currency, Corporate Decision 97-109);

(b) such non-cumulative perpetual preferred stock of a Subsidiary of the Depositary Institution Subsidiary must be exchangeable automatically into non-cumulative perpetual preferred stock of the Corporation in the event that the Appropriate Federal Banking Agency directs such Depository Institution Subsidiary in writing to make a conversion because such Depository Institution Subsidiary is (i) undercapitalized under the applicable prompt corrective action regulations (which, for example, in the case of the Office of the Comptroller of the Currency and applicable to national banks, are at 12 C.F.R. 6.4(b)), (ii) placed into conservatorship or receivership, or (iii) expected to become undercapitalized in the near term;

(c) if such Subsidiary of the Depositary Institution Subsidiary is a REIT, the transaction documents include provisions that would enable the REIT to stop paying Distributions on its non-cumulative perpetual preferred stock without causing the Subsidiary to fail to comply with the income distribution and other requirements of the Internal Revenue Code applicable to REITs;

(d) such non-cumulative perpetual preferred stock of the Corporation issued upon exchange for the non-cumulative perpetual preferred stock of a Subsidiary of a Depository Institution Subsidiary issued as part of such transaction ranks *pari passu* or junior to other preferred stock of the Corporation or a Depository Institution Subsidiary, as applicable; and

(e) such REIT Preferred Securities and non-cumulative perpetual preferred stock of the Corporation or Depository Institution Subsidiary for which it may be exchanged are subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Replacement Capital Covenant.

"***Replacement Capital Covenant***" has the meaning specified in the introduction to this instrument.

"***Replacement Capital Securities***" means

(a) Common Stock and rights to acquire Common Stock;

(b) Mandatorily Convertible Preferred Stock; and

(c) Qualifying Capital Securities.

"***Securities***" has the meaning specified in Recital A.

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

"***Shares"*** has the meaning specified in Recital A (and includes the "Depositary Shares" for the Shares referred to in the Prospectus Supplement.)

"***Stock Purchase Date***" has the meaning specified in Recital A.

"***Subsidiary***" means, at any time, any Person the shares of stock or other ownership interests of which having ordinary voting power to elect a majority of the board of directors or other managers of such Person are at the time owned, or the management or policies of which are otherwise at the time controlled, directly or indirectly through one or more intermediaries (including other Subsidiaries) or both, by another Person.

"***Termination Date***" has the meaning specified in Section 4(a).

"***Treasury HITS***" has the meaning specified in Recital A.

Exhibit 99.2

REPLACEMENT CAPITAL COVENANT

Replacement Capital Covenant, dated as of February 16, 2007 (this "Replacement Capital Covenant"), by Bank of America Corporation, a Delaware corporation (together with its successors and assigns, the "Corporation"), in favor of and for the benefit of each Covered Debtholder (as defined below).

Recitals

A. On the date hereof, BAC Capital Trust XIV, a Delaware statutory trust (the "Trust") having the Corporation as its grantor, is issuing 850,000 of its "5.63% Fixed to Floating Rate Preferred Hybrid Income Term Securities", or "Preferred HITS", having a stated amount of $1,000 per Preferred HITS and $850,000,000 in the aggregate. Each Preferred HITS corresponds to (1) $1,000 principal amount of "Remarketable Fixed Rate Junior Subordinated Notes due 2043", or "Junior Subordinated Notes" issued pursuant to a fourteenth supplemental indenture between the Corporation and the trustee named therein (the "Supplemental Indenture), owned by the Trust and (2) a 1/100th interest in a "Stock Purchase Contract" pursuant to which the Trust is obligated to purchase, and the Corporation is obligated to sell, on the "Stock Purchase Date" determined pursuant to the Stock Purchase Contract, one share of the Corporation's Adjustable Rate Non-Cumulative Preferred Stock, Series G, $100,000 liquidation preference per share (the "Preferred Stock"; the shares of Preferred Stock covered by all of the Stock Purchase Contracts owned by the Trust, collectively, the "Shares" and, together with the Preferred HITS, the "Treasury HITS" and the "Corporate HITS", each as defined in the Prospectus Supplement referred to in Recital B, the "Securities").

B. This Replacement Capital Covenant is the "Replacement Capital Covenant" referred to in the Prospectus Supplement, dated February 12, 2007 (the "Prospectus Supplement"), relating to, among other securities, the Securities.

C. The Corporation is entering into and disclosing the content of this Replacement Capital Covenant in the manner provided below with the intent that the covenants provided for in this Replacement Capital Covenant be enforceable by each Covered Debtholder and that the Corporation be estopped from disregarding the covenants in this Replacement Capital Covenant, in each case to the fullest extent permitted by applicable law.

D. The Corporation acknowledges that reliance by each Covered Debtholder upon the covenants in this Replacement Capital Covenant is reasonable and foreseeable by the Corporation and that, were the Corporation to disregard its covenants in this Replacement Capital Covenant, each Covered Debtholder would have sustained an injury as a result of its reliance on such covenants.

NOW, THEREFORE, the Corporation hereby covenants and agrees as follows in favor of and for the benefit of each Covered Debtholder.

SECTION 1. Definitions. Capitalized terms used in this Replacement Capital Covenant (including in the Recitals) have the meanings set forth in Schedule I hereto.

SECTION 2. Limitations on Redemption and Purchase of Securities. The Corporation hereby promises and covenants to, and for the benefit of, each Covered Debtholder that neither the Corporation, nor any Subsidiary of the Corporation, shall redeem or purchase (a) any of the Securities prior to the Stock Purchase Date or (b) the Preferred HITS or Shares on or after the Stock Purchase Date, except in either case to the extent that (x) the Corporation has obtained the prior approval of the Federal Reserve if such approval is then required under the Federal Reserve's capital guidelines applicable to bank holding companies and (y) the applicable redemption or purchase price does not exceed the sum of the following amounts:

(i) 133.33% of the aggregate amount of the net cash proceeds the Corporation and its Subsidiaries have received within a Measurement Period (without double counting proceeds received in any prior Measurement Period) from the sale of Common Stock and rights to acquire Common Stock to Persons other than the Corporation and its Subsidiaries; plus

(ii) 100% of the aggregate amount of the net cash proceeds the Corporation and its Subsidiaries have received within a Measurement Period (without double counting proceeds received in any prior Measurement Period) from the sale of Mandatorily Convertible Preferred Stock or Qualifying Non-Cumulative Perpetual Preferred Stock to Persons other than the Corporation and its Subsidiaries; plus

(iii) 100% of the aggregate amount of the net cash proceeds the Corporation and its Subsidiaries have received within a Measurement Period (without double counting proceeds received in any prior Measurement Period) from the sale of REIT Preferred Securities to Persons other than the Corporation and its Subsidiaries; plus

(iv) 100% of the aggregate amount of the net cash proceeds the Corporation and its Subsidiaries have received within a Measurement Period (without double counting proceeds received in any prior Measurement Period) from the sale of Qualifying Capital Securities to Persons other than the Corporation and its Subsidiaries;

provided that, in the case of any such redemption or purchase prior to the Stock Purchase Date, such securities qualify as Tier 1 capital of the Corporation under the risk-based guidelines of the Federal Reserve and are not "restricted core capital elements" under such guidelines.

SECTION 3. Covered Debt. (a) The Corporation represents and warrants that the Initial Covered Debt is Eligible Debt.

(b) On or during the 30-day period immediately preceding any Redesignation Date with respect to the Covered Debt then in effect, the Corporation shall identify the series of Eligible Debt that will become the Covered Debt on and after such Redesignation Date in accordance with the following procedures:

(i) the Corporation shall identify each series of its and its Depository Institution Subsidiaries' then outstanding long-term indebtedness for money borrowed that is Eligible Debt;

(ii) if only one series of the Corporation's then outstanding long-term indebtedness for money borrowed is Eligible Debt, such series shall become the Covered Debt commencing on the related Redesignation Date;

(iii) if the Corporation has more than one outstanding series of long-term indebtedness for money borrowed that is Eligible Debt, then the Corporation shall identify the series that has the latest occurring final maturity date as of the date the Corporation is applying the procedures in this Section 3(b) and such series shall become the Covered Debt on the related Redesignation Date;

(iv) if the Corporation has no outstanding series of long-term indebtedness for money borrowed that is Eligible Debt, and its Largest Depository Institution Subsidiary has only one outstanding series of long-term indebtedness for money borrowed that is Eligible Debt, such series shall become the Covered Debt commencing on the related Redesignation Date;

(v) if the Corporation has no outstanding series of long-term indebtedness for money borrowed that is Eligible Debt, but its Largest Depository Institution Subsidiary has more than one outstanding series of long-term indebtedness for money borrowed that is Eligible Debt, then the Corporation shall identify the series that has the latest occurring final maturity date as of the date the Corporation is applying the procedures in this Section 3(b) and such series shall become the Covered Debt on the related Redesignation Date;

(vi) the series of outstanding long-term indebtedness for money borrowed that is determined to be Covered Debt pursuant to clause (ii), (iii), (iv) or (v) above shall be the Covered Debt for purposes of this Replacement Capital Covenant for the period commencing on the related Redesignation Date and continuing to but not including the Redesignation Date as of which a new series of outstanding long-term indebtedness is next determined to be the Covered Debt pursuant to the procedures set forth in this Section 3(b); and

(vii) in connection with the identification of a new series of Covered Debt, the Corporation shall give notice as provided for in Section 3(c) within the time frame provided for in such section.

(c) Notice. In order to give effect to the intent of the Corporation described in Recital C, the Corporation covenants that (i) simultaneously with the execution of this Replacement Capital Covenant or as soon as practicable after the date hereof, it shall (x) give notice to the Holders of the Initial Covered Debt, in the manner provided in the indenture relating to the Initial Covered Debt, of this Replacement Capital Covenant and the rights granted to such Holders hereunder and (y) file a copy of this Replacement Capital Covenant with the Commission as an exhibit to a Current Report on Form 8-K under the Securities Exchange Act; (ii) so long as the Corporation is a reporting company under the Securities Exchange Act, the Corporation will include in each annual report on Form 10-K filed with the Commission under the Securities Exchange Act a description of the covenant set forth in Section 2 and identify the series of long-term indebtedness for borrowed money that is Covered Debt as of the filing date of such Form

10-K; (iii) if a series of the Corporation's or one of its Depository Institution Subsidiary's long-term indebtedness for money borrowed (1) becomes Covered Debt or (2) ceases to be Covered Debt, the Corporation shall give notice of such occurrence within 30 days to the holders of such long-term indebtedness for money borrowed in the manner provided for in the indenture, fiscal agency agreement or other instrument under which such long-term indebtedness for money borrowed was issued and report such change in a Current Report on Form 8-K including or incorporating by reference this Replacement Capital Covenant, and the Corporation's next quarterly report on Form 10-Q or annual report on Form 10-K, as applicable; (iv) if, and only if, the Corporation ceases to be a reporting company under the Securities Exchange Act, the Corporation shall post on its website the information otherwise required to be included in Securities Exchange Act filings pursuant to clauses (ii) and (iii) of this Section 3(c); and (v) promptly upon request by any Holder of Covered Debt, the Corporation shall provide such Holder with an executed copy of this Replacement Capital Covenant.

SECTION 4. Termination, Amendment and Waiver. (a) The obligations of the Corporation pursuant to this Replacement Capital Covenant shall remain in full force and effect until the earlier date (the "Termination Date") to occur of (i) the date, if any, on which the Holders of a majority by principal amount of the then-effective series of Covered Debt consent or agree in writing to the termination of this Replacement Capital Covenant and the obligations of the Corporation hereunder and (ii) the date on which neither the Corporation nor any of its Depository Institution Subsidiaries has any series of outstanding Eligible Senior Debt or Eligible Subordinated Debt (in each case without giving effect to the rating requirement in clause (b) of the definition of each such term). Moreover, if an event of default under the Supplemental Indenture resulting in an acceleration of the Junior Subordinated Notes occurs, this Replacement Capital Covenant shall, without any further action, immediately terminate upon such acceleration. From and after the Termination Date, the obligations of the Corporation pursuant to this Replacement Capital Covenant shall be of no further force and effect.

(b) This Replacement Capital Covenant may be amended or supplemented from time to time by a written instrument signed by the Corporation with the consent of the Holders of a majority by principal amount of the then-effective series of Covered Debt, provided that this Replacement Capital Covenant may be amended or supplemented from time to time by a written instrument signed only by the Corporation (and without the consent of the Holders of the then-effective series of Covered Debt) if any of the following apply (it being understood that any such amendment or supplement may fall into one or more of the following): (i) the effect of such amendment or supplement is solely to impose additional restrictions on, or to eliminate certain of, the types of securities qualifying as Replacement Capital Securities, and an officer of the Corporation has delivered to the Holders of the then effective series of Covered Debt in the manner provided for in the indenture, fiscal agency agreement or other instrument with respect to such Covered Debt a written certificate to that effect; (ii) such amendment eliminates Common Stock or Mandatorily Convertible Preferred Stock (but only to the extent exchangeable for Common Stock) as Replacement Capital Securities, if in the case of this clause (ii) the Corporation has been advised in writing by a nationally recognized independent accounting firm that there is more than an insubstantial risk that the failure to do so would result in a reduction in the Corporation's earnings per share as calculated for financial reporting purposes or (iii) such amendment or supplement is not adverse to the Holders of the then-effective series of Covered Debt and an officer of the Corporation has delivered to the Holders of the then-effective series of

Covered Debt in the manner provided for in the indenture, fiscal agency agreement or other instrument with respect to such Covered Debt a written certificate stating that, in his or her determination, such amendment or supplement is not adverse to the Holders of the then-effective series of Covered Debt.

(c) For purposes of Sections 4(a) and 4(b), the Holders whose consent or agreement is required to terminate, amend or supplement the obligations of the Corporation under this Replacement Capital Covenant shall be the Holders of the then-effective Covered Debt as of a record date established by the Corporation that is not more than 30 days prior to the date on which the Corporation proposes that such termination, amendment or supplement becomes effective.

SECTION 5. Miscellaneous. (a) This Replacement Capital Covenant shall be governed by and construed in accordance with the laws of the State of New York.

(b) This Replacement Capital Covenant shall be binding upon the Corporation and its successors and assigns and shall inure to the benefit of the Covered Debtholders as they exist from time-to-time (it being understood and agreed by the Corporation that any Person who is a Covered Debtholder at the time such Person acquires, holds or sells Covered Debt shall retain its status as a Covered Debtholder for so long as the series of long-term indebtedness for borrowed money owned by such Person is Covered Debt and, if such Person initiates a claim or proceeding to enforce its rights under this Replacement Capital Covenant after the Corporation has violated its covenants in Section 2 and before the series of long-term indebtedness for money borrowed held by such Person is no longer Covered Debt, such Person's rights under this Replacement Capital Covenant shall not terminate by reason of such series of long-term indebtedness for money borrowed no longer being Covered Debt). Other than the Covered Debtholders as provided in the previous sentence, no other Person shall have any rights under this Replacement Capital Covenant or be deemed a third-party beneficiary of this Replacement Capital Covenant. In particular, no holder of the Junior Subordinated Notes is a third-party beneficiary of this Replacement Capital Covenant, it being understood that such holders may have rights under the Supplemental Indenture.

(c) All demands, notices, requests and other communications to the Corporation under this Replacement Capital Covenant shall be deemed to have been duly given and made if in writing and (i) if served by personal delivery upon the Corporation, on the day so delivered (or, if such day is not a Business Day, the next succeeding Business Day), (ii) if delivered by registered post or certified mail, return receipt requested, or sent to the Corporation by a national or international courier service, on the date of receipt by the Corporation (or, if such date of receipt is not a Business Day, the next succeeding Business Day), or (iii) if sent by telecopier, on the day telecopied, or if not a Business Day, the next succeeding Business Day, provided that the telecopy is promptly confirmed by telephone confirmation thereof, and in each case to the Corporation at the address set forth below, or at such other address as the Corporation may thereafter notify to Covered Debtholders or post on its website as the address for notices under this Replacement Capital Covenant:

Bank of America Corporation
Corporate Treasury – Securities Administration

NC1-007-07-06
100 North Tryon Street
Charlotte, NC 28255
Attention: Corporate Treasury – Securities Administration
Telephone: 1 (866) 804-5241
Facsimile: (704) 386-0270
Email: securities.administration@bankofamerica.com

[*Signature page on next page*]

IN WITNESS WHEREOF, the Corporation has caused this Replacement Capital Covenant to be executed by its duly authorized officer, as of the day and year first above written.

BANK OF AMERICA CORPORATION

By: /s/ Ann J. Travis
Name: Ann J. Travis
Title: Senior Vice President

Definitions

"***Alternative Payment Mechanism***" means, with respect to any securities or combination of securities (together in this definition, "such securities"), provisions in the related transaction documents that require the Corporation or its Subsidiaries to issue (or use commercially reasonable efforts to issue) one or more types of APM Qualifying Securities raising eligible proceeds at least equal to the deferred Distributions on such securities and apply the proceeds to pay unpaid Distributions on such securities, commencing on the earlier of (x) the first Distribution Date after commencement of a deferral period on which the Corporation pays current Distributions on such securities and (y) the fifth anniversary of the commencement of such deferral period, and that:

(a) define "eligible proceeds" to mean, for purposes of such Alternative Payment Mechanism, the net proceeds (after underwriters' or placement agents' fees, commissions or discounts and other expenses relating to the issuance or sale of the relevant securities, where applicable, and including the fair market value of property received by the Corporation or any of its Subsidiaries as consideration for such securities) that the Corporation has received during the 180 days prior to the related Distribution Date from the issuance of APM Qualifying Securities, up to the Preferred Cap (as defined in paragraph (f) below) in the case of APM Qualifying Securities that are Qualifying Non-Cumulative Perpetual Preferred Stock;

(b) permit the Corporation to pay current Distributions on any Distribution Date out of any source of funds but (x) require the Corporation to pay deferred Distributions only out of eligible proceeds and (y) prohibit the Corporation from paying deferred Distributions out of any source of funds other than eligible proceeds, unless (if the Corporation elects to so provide in the terms of such securities) otherwise required at the time by the Federal Reserve;

(c) if deferral of Distributions continues for more than one year (or such shorter period as provided for in the terms of such securities), require the Corporation or its Subsidiaries not to redeem, repay or repurchase any APM Qualifying Securities or any securities of the Corporation that on a bankruptcy or liquidation of the Corporation rank pari passu with or junior to such securities until at least one year after all deferred Distributions have been paid;

(d) notwithstanding clause (b) of this definition, if the Federal Reserve disapproves of the Corporation's or its Subsidiaries' sale of APM Qualifying Securities, may (if the Corporation elects to so provide in the term of such securities) permit the Corporation to pay deferred Distributions from any source without a breach of its obligations under the transaction documents;

(e) if the Federal Reserve does not disapprove the Corporation's issuance and sale of APM Qualifying Securities but disapproves the use of the proceeds thereof to pay deferred Distributions, may (if the Corporation elects to so provide in the terms of such securities) permit the Corporation to use such proceeds for other purposes and to continue to defer Distributions without a breach of its obligations under the transaction documents; and

(f) limit the obligation of the Corporation or its Subsidiaries to issue (or use commercially reasonable efforts to issue) APM Qualifying Securities up to:

(i) in the case of APM Qualifying Securities that are Common Stock or rights to purchase Common Stock, either (i) during the first five years of any deferral period or (ii) with respect to deferred Distributions attributable to the first five years of any deferral period (provided that such limitation shall not apply after the sixth anniversary of the commencement of any deferral period) an amount from the issuance thereof pursuant to the Alternative Payment Mechanism (including at any point in time from all prior issuances thereof pursuant to the Alternative Payment Mechanism) equal to 2% of the product of the average of the current stock market prices of the Common Stock on the ten consecutive trading days ending on the fourth trading day immediately preceding the date of issuance multiplied by the total number of issued and outstanding shares of Common Stock as of the date of the Corporation's most recent publicly available consolidated financial statements (the "Common Cap"), provided (and it being understood) that (x) in the case of clauses (i) and (ii) above, once the Corporation reaches the Common Cap, until the Common Cap ceases to apply the Corporation will not be required to issue more Common Stock or rights to purchase Common Stock under the Alternative Payment Mechanism with respect to deferred Distributions attributable to the first five years of a deferral period even if the amount referred to in this subclause (i) subsequently increases because of a subsequent increase in the current market price of Common Stock or the number of outstanding shares of Common Stock, and (y) in the case of clause (ii), the Common Cap shall cease to apply to such deferral period by a date (as specified in the related transaction documents) which shall be not later than the ninth anniversary of the commencement of such deferral period;

(ii) in the case of APM Qualifying Securities that are Qualifying Non-Cumulative Preferred Stock, an amount from the issuance thereof pursuant to the related Alternative Payment Mechanism (including at any point in time from all prior issuances thereof pursuant to such Alternative Payment Mechanism) equal to 25% of the liquidation or principal amount of the securities that are the subject of the related Alternative Payment Mechanism (the "Preferred Cap");

(g) in the case of securities other than Non-Cumulative Perpetual Preferred Stock, include a Bankruptcy Claim Limitation Provision; and

(h) permit the Corporation, at its option, to provide that if the Corporation is involved in a merger, consolidation, amalgamation, binding share exchange or conveyance, transfer or lease of assets substantially as an entirety to any other person or a similar transaction (a "*business combination*") where immediately after the consummation of the business combination more than 50% of the surviving or resulting entity's voting stock is owned by the shareholders of the other party to the business combination, then clauses (a), (b) and (c) above will not apply to the extent that any deferral period is terminated on the next interest payment date following the date of consummation of the business combination; provided, however that the surviving entity may pay any deferred and unpaid interest on such next interest payment date or if later, at any time within 90 days following the date of consummation of the business combination;

provided (and it being understood) that:

(a) the Corporation shall not be obligated to issue (or use commercially reasonable efforts to issue) APM Qualifying Securities for so long as a Market Disruption Event has occurred and is continuing;

(b) if, due to a Market Disruption Event or otherwise, the Corporation is able to raise and apply some, but not all, of the eligible proceeds necessary to pay all deferred Distributions on any Distribution Date, the Corporation will apply any available eligible proceeds to pay accrued and unpaid Distributions on the applicable Distribution Date in chronological order subject to the Common Cap, the Preferred Cap, and any maximum issuance cap referred to above, as applicable; and

(c) if the Corporation has outstanding more than one class or series of securities under which it is obligated to sell a type of APM Qualifying Securities and apply some part of the proceeds to the payment of deferred Distributions, then on any date and for any period the amount of net proceeds received by the Corporation from those sales and available for payment of deferred Distributions on such securities shall be applied to such securities on a pro rata basis up to the Common Cap, the Preferred Cap and any maximum issuance cap referred to above, as applicable, in proportion to the total amounts that are due on such securities, or on such other basis as the Federal Reserve may approve.

"***APM Qualifying Securities***" means, with respect to an Alternative Payment Mechanism, or with respect to a Mandatory Trigger Provision, one or more of the following (as designated in the transaction documents for the Qualifying Capital Securities that include an Alternative Payment Mechanism):

(a) Common Stock;

(b) rights to purchase Common Stock; or

(c) Qualifying Non-Cumulative Perpetual Preferred Stock;

provided that if the APM Qualifying Securities for any Alternative Payment Mechanism include both Common Stock and rights to purchase Common Stock, such Alternative Payment Mechanism may permit, but need not require, the Corporation to issue rights to purchase Common Stock.

"***Appropriate Federal Banking Agency***" means, as to a Depository Institution Subsidiary, the Federal bank regulatory agency or authority that is the "appropriate Federal banking agency" (within the meaning of 12 U.S.C. § 1813(q)) with respect to such Depository Institution Subsidiary.

"***Bankruptcy Claim Limitation Provision***" means, with respect to any securities or combination of securities that have an Alternative Payment Mechanism or a Mandatory Trigger Provision (together in this definition, "*securities*"), provisions that, upon any liquidation, dissolution, winding up or reorganization or in connection with any insolvency, receivership or proceeding under any bankruptcy law with respect to the issuer, limit the claim of the holders of

such securities to Distributions that accumulate during (a) any deferral period, in the case of securities that have an Alternative Payment Mechanism or (b) any period in which the Corporation fails to satisfy one or more financial tests set forth in the terms of such securities or related transaction agreements, in the case of securities having a Mandatory Trigger Provision, to:

(i) in the case of securities having an Alternative Payment Mechanism or Mandatory Trigger Provision with respect to which the APM Qualifying Securities do not include Qualifying Non-Cumulative Perpetual Preferred Stock, 25% of the stated or principal amount of such securities then outstanding; and

(ii) in the case of any other securities, the sum of (x) the amount of accumulated and unpaid Distributions (including compounded amounts) that relate to the earliest two years of the portion of the deferral period for which Distributions have not been paid and (y) an amount equal to the excess, if any, of the Preferred Cap over the aggregate amount of net proceeds from the sale of Qualifying Non-Cumulative Perpetual Preferred Stock that the issuer has applied to pay such Distributions pursuant to the Alternative Payment Mechanism or the Mandatory Trigger Provision, *provided* that the holders of such securities are deemed to agree that, to the extent the remaining claim exceeds the amount set forth in subclause (x), the amount they receive in respect of such excess shall not exceed the amount they would have received had such claim ranked *pari passu* with the interests of the holders, if any, of Qualifying Non-Cumulative Perpetual Preferred Stock.

"***Business Day***" means each day other than (a) a Saturday or Sunday or (b) a day on which banking institutions in The City of New York and Charlotte, North Carolina are authorized or required by law or executive order to remain closed.

"***Commission***" means the United States Securities and Exchange Commission.

"***Common Cap***" has the meaning specified in the definition of Alternative Payment Mechanism.

"***Common Stock***" means common stock of the Corporation or its Subsidiaries (including common stock issued pursuant to the Corporation's dividend reinvestment plan and employee benefit plans).

"***Corporation***" has the meaning specified in the introduction to this instrument.

"***Covered Debt***" means (a) at the date of this Replacement Capital Covenant and continuing to but not including the first Redesignation Date, the Initial Covered Debt and (b) thereafter, commencing with each Redesignation Date and continuing to but not including the next succeeding Redesignation Date, the Eligible Debt identified pursuant to Section 3(b) as the Covered Debt for such period.

"***Covered Debtholder***" means each Person (whether a Holder or a beneficial owner holding through a participant in a clearing agency) that buys, holds or sells long-term indebtedness for money borrowed of the Corporation or its Depository Institution Subsidiary during the period that such long-term indebtedness for money borrowed is Covered Debt.

"***Depository Institution Subsidiary***" means Bank of America, N.A. or any successor institution that is a Subsidiary of the Corporation and also a depository institution within the meaning of 12 C.F.R. § 204.2(m).

"***Distribution Date***" means, as to any securities or combination of securities, the dates on which Distributions on such securities are scheduled to be made.

"***Distribution Period***" means, as to any securities or combination of securities, each period from and including a Distribution Date for such securities to but not including the next succeeding Distribution Date for such securities.

"***Distributions***" means, as to a security or combination of securities, dividends, interest or other income distributions to the holders thereof that are not Subsidiaries of the Corporation.

"***Eligible Debt***" means, at any time, Eligible Subordinated Debt or, if no Eligible Subordinated Debt is then outstanding, Eligible Senior Debt.

"***Eligible Senior Debt***" means, at any time in respect of any issuer, each series of outstanding long-term indebtedness for money borrowed of such issuer that (a) upon a bankruptcy, liquidation, dissolution or winding up of the issuer, ranks most senior among the issuer's then outstanding classes of unsecured indebtedness for money borrowed, (b) is then assigned a rating by at least one NRSRO (provided that this clause (b) shall apply on a Redesignation Date only if on such date the issuer has outstanding senior long-term indebtedness for money borrowed that satisfies the requirements of clauses (a), (c) and (d) that is then assigned a rating by at least one NRSRO), (c) has an outstanding principal amount of not less than $100,000,000, (d) was issued through or with the assistance of a commercial or investment banking firm or firms acting as underwriters, initial purchasers or placement or distribution agents, and (e) if issued by a Depository Institution Subsidiary, is fully and unconditionally guaranteed by the Corporation on (I) a subordinated basis or (II) if on the relevant Redesignation Date there is no outstanding debt of a Depository Institution Subsidiary meeting the other requirements set forth above and guaranteed by the Corporation on a subordinated basis but there is outstanding debt of a Depository Institution Subsidiary meeting such requirements and guaranteed on a senior basis, a senior basis. For purposes of this definition as applied to securities with a CUSIP number, each issuance of long-term indebtedness for money borrowed that has (or, if such indebtedness is held by a trust or other intermediate entity established directly or indirectly by the issuer, the securities of such intermediate entity that have) a separate CUSIP number shall be deemed to be a series of the issuer's long-term indebtedness for money borrowed that is separate from each other series of such indebtedness.

"***Eligible Subordinated Debt***" means, at any time in respect of any issuer, each series of the issuer's then-outstanding long-term indebtedness for money borrowed that (a) upon a bankruptcy, liquidation, dissolution or winding up of the issuer, ranks subordinate to the issuer's then outstanding series of unsecured indebtedness for money borrowed that ranks most senior, (b) is then assigned a rating by at least one NRSRO (provided that this clause (b) shall apply on a

Redesignation Date only if on such date the issuer has outstanding subordinated long-term indebtedness for money borrowed that satisfies the requirements in clauses (a), (c) and (d) that is then assigned a rating by at least one NRSRO), (c) has an outstanding principal amount of not less than $100,000,000, (d) was issued through or with the assistance of a commercial or investment banking firm or firms acting as underwriters, initial purchasers or placement or distribution agents, and (e) if issued by a Depository Institution Subsidiary, is fully and unconditionally guaranteed by the Corporation on (I) a subordinated basis or (II) if on the relevant Redesignation Date there is no outstanding debt of a Depository Institution Subsidiary meeting the other requirements set forth above and guaranteed by the Corporation on a subordinated basis but there is outstanding debt of a Depository Institution Subsidiary meeting such requirements and guaranteed on a senior basis, a senior basis. For purposes of this definition as applied to securities with a CUSIP number, each issuance of long-term indebtedness for money borrowed that has (or, if such indebtedness is held by a trust or other intermediate entity established directly or indirectly by the issuer, the securities of such intermediate entity that have) a separate CUSIP number shall be deemed to be a series of the issuer's long-term indebtedness for money borrowed that is separate from each other series of such indebtedness.

"***Federal Reserve***" means (i) the Board of Governors of the Federal Reserve System, as from time to time constituted, or if at any time after the execution of this Agreement the Federal Reserve is not existing and performing the duties now assigned to it, then the body or bodies performing such duties at such time, or the Federal Reserve Bank of Richmond, or (ii) any successor Federal Reserve Bank (or successor body performing such duties) having primary jurisdiction over the Corporation.

"***Holder***" means, as to the Covered Debt then in effect, each holder of such Covered Debt as reflected on the securities register maintained by or on behalf of the Corporation with respect to such Covered Debt.

"***Initial Covered Debt***" means the Corporation's 5 5/8% Junior Subordinated Notes, due 2035.

"***Intent-Based Replacement Disclosure***" means, as to any security or combination of securities, that the Corporation has publicly stated its intention, either in the prospectus or other offering document under which such securities were initially offered for sale or in filings with the Commission made by the Corporation under the Securities Exchange Act prior to or contemporaneously with the issuance of such securities, that the Corporation will redeem or purchase such securities only with the proceeds of replacement capital securities that have terms and provisions at the time of redemption or purchase that are as or more equity-like than the securities then being redeemed or purchased, raised within 180 days prior to the applicable redemption or purchase date. Notwithstanding the use of the term "Intent-Based Replacement Disclosure" in the definitions of "Qualifying Capital Securities" and "Qualifying Non-Cumulative Perpetual Preferred Stock", the requirement in each such definition that a particular security or the related transaction documents include Intent-Based Replacement Disclosure shall be disregarded and given no force or effect for so long as the Corporation is a bank holding company within the meaning of the Bank Holding Company Act of 1956, as amended.

"***Largest Depository Institution Subsidiary***" means, from time to time, the Depository Institution Subsidiary of the Corporation with the greatest total assets that also has outstanding at least one series of Eligible Subordinated Debt; provided, however, that if no Depository Institution Subsidiary of the Corporation has outstanding a series of Eligible Subordinated Debt, this term shall mean the Depository Institution Subsidiary of the Corporation with the greatest total assets that also has outstanding at least one series of Eligible Senior Debt.

"***Mandatorily Convertible Preferred Stock***" means cumulative preferred stock with (a) no prepayment obligation on the part of the issuer thereof, whether at the election of the holders or otherwise, and (b) a requirement that the preferred stock convert into Common Stock of the Corporation within three years from the date of its issuance at a conversion ratio within a range established at the time of issuance of the preferred stock.

"***Mandatory Trigger Provision***" means, as to any security or combination of securities (together in this definition, "securities"), provisions in the terms thereof or of the related transaction agreements that:

(A) require, or at its option in the case of Qualifying Non-Cumulative Perpetual Preferred Stock permit, the issuer of such securities to make payment of Distributions on such securities only pursuant to the issuance and sale of APM Qualifying Securities, within two years of a failure to satisfy one or more financial tests set forth in the terms of such securities or related transaction agreements, in amount such that the net proceeds of such sale are at least equal to the amount of unpaid Distributions on such securities (including without limitation all deferred and accumulated amounts), and in either case require the application of the net proceeds of such sale to pay such unpaid Distributions, provided that if the APM Qualifying Securities issued and sold are Qualifying Non-Cumulative Perpetual Preferred Stock the amount of the net proceeds of Qualifying Non-Cumulative Perpetual Preferred Stock which the issuer may apply to pay such Distributions pursuant to such provision may not exceed 25% of the initial liquidation or principal amount of such securities, (B) prohibit the issuer from repurchasing any APM Qualifying Securities or any securities of the issuer that on a bankruptcy or liquidation rank junior to or pari passu with APM Qualifying Securities prior to the date 180 days after the issuer applies the net proceeds of the sales described in clause (A) to pay such unpaid Distributions in full, and (C) upon any liquidation, dissolution, winding up, reorganization or in connection with any insolvency, receivership or proceeding under any bankruptcy law with respect to the Corporation or its Subsidiaries, limit the claim of the holders of such securities (other than Qualifying Non-Cumulative Perpetual Preferred Stock) to Distributions that accumulate during a period in which the Corporation fails to satisfy one or more financial tests set forth in the terms of such securities or related transaction agreements to (x) 25% of the principal amount of such securities then outstanding in the case of securities not permitting the issuance and sale pursuant to the provisions described in clause (A) above of securities other than Common Stock or rights to acquire Common Stock or (y) two years of accumulated and unpaid Distributions (including compounded amounts thereon) in all other cases. No remedy other than Permitted Remedies will arise by the terms of such securities or related transaction agreements in favor of the holders of such securities as a result of the issuer's failure to pay Distributions because of the Mandatory Trigger Provision or as a result of the issuer's exercise of its right under an Optional Deferral Provision until Distributions have been deferred for one or more Distribution Periods that total together at least ten years.

"***Market Disruption Event***" means the occurrence or existence of any of the following events or sets of circumstances:

(a) the Corporation would be required to obtain the consent or approval of its stockholders or a regulatory body (including, without limitation, any securities exchange) or governmental authority to issue or sell APM Qualifying Securities and such consent or approval has not yet been obtained notwithstanding the Corporation's commercially reasonable efforts to obtain such consent or approval (including, without limitation, failing to obtain approval for such issuance if required by the Federal Reserve after giving notice to the Federal Reserve as required under the Supplemental Indenture);

(b) trading in securities generally on the New York Stock Exchange or on any other national securities exchange or over-the-counter market on which the Common Stock and/or the Corporation's preferred stock is then listed or traded shall have been suspended or the settlement of such trading generally shall have been materially disrupted or minimum prices shall have been established on any such exchange or market by the Commission, by the relevant exchange or by any other regulatory body or governmental body having jurisdiction;

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

(d) an event occurs and is continuing as a result of which the offering document for such offer and sale of APM Qualifying Securities would, in the judgment of the Corporation, 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 and either (a) the disclosure of that event at such time, in the judgment of the Corporation, is not otherwise required by law and would have a material adverse effect on the business of the Corporation or (b) the disclosure relates to a previously undisclosed proposed or pending material business transaction, the disclosure of which would impede the ability of the Corporation to consummate such transaction, provided that no single suspension period contemplated by this paragraph (d) shall exceed 90 consecutive days and multiple suspension periods contemplated by this paragraph (d) shall not exceed an aggregate of 180 days in any 360-day period; or

(e) the Corporation reasonably believes, for reasons other than those referred to in paragraph (d) above, that the offering document for such offer and sale of APM Qualifying Securities would not be in compliance with a rule or regulation of the Commission and the Corporation is unable to comply with such rule or regulation or such compliance is unduly burdensome, provided that no single suspension period contemplated by this paragraph (e) shall exceed 90 consecutive days and multiple suspension periods contemplated by this paragraph (e) shall not exceed an aggregate of 180 days in any 360-day period.

The definition of "Market Disruption Event" as used in any securities or combination of securities that constitute Qualifying Capital Securities may include less than all of the paragraphs outlined above, as determined by the Corporation or its Subsidiaries at the time of issuance of such securities, and in the case of clauses (a), (b) and (c), as applicable to a circumstance where the Corporation would otherwise endeavor to issue preferred stock, shall be limited to circumstances affecting markets where the Corporation's preferred stock trades or where a listing for its trading is being sought.

"***Measurement Date***" means, with respect to any repayment, redemption or purchase of Securities, the date 180 days prior to the delivery of notice of such repayment, redemption or the date of such purchase.

"***Measurement Period***" with respect to any notice date or purchase date means the period (i) beginning on the Measurement Date with respect to such notice date or purchase date and (ii) ending on such notice date or purchase date. Measurement Periods cannot run concurrently.

"***Non-Cumulative***" means, with respect to any securities, that the issuer thereof may elect not to make any number of periodic Distributions without any remedy arising under the terms of the securities or related agreements in favor of the holders, other than one or more Permitted Remedies. Securities that include an Alternative Payment Mechanism shall also be deemed to be Non-Cumulative for all purposes of this Replacement Capital Covenant, other than the definitions of APM Qualifying Securities and Qualifying Non-Cumulative Perpetual Preferred Stock.

"***NRSRO***" means a nationally recognized statistical rating organization within the meaning of Rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act.

"***Optional Deferral Provision***" means, as to any securities or combination of securities (together in this definition, "securities"), a provision in the terms thereof or of the related transaction agreements to the effect that the issuer of such securities may in its sole discretion, or shall in response to a directive or order from the Federal Reserve, defer or skip in whole or in part payment of Distributions on such securities for one or more consecutive Distribution Periods of up to ten years without any remedy other than Permitted Remedies.

"***Other Qualifying Replacement Capital Covenant***" means a replacement capital covenant, as identified by the Corporation's Board of Directors acting in good faith and in its reasonable discretion, (i) entered into by a company that at the time it enters into such replacement capital covenant is a reporting company under the Securities Exchange Act and (ii) that restricts the related issuer from redeeming or purchasing identified securities except out of the proceeds of specified replacement capital securities that have terms and provisions at the time of redemption or purchase that are as or more equity-like than the securities then being redeemed or purchased, raised within 180 days prior to the applicable redemption or purchase date.

"***Permitted Remedies***" means, with respect to any securities, one or more of the following remedies:

(a) rights in favor of the holders of such securities permitting such holders to elect one or more directors of the issuer (including any such rights required by the listing requirements of any stock or securities exchange on which such securities may be listed or traded); and

(b) complete or partial prohibitions on the issuer paying Distributions on or repurchasing common stock or other securities that rank *pari passu* with or junior as to Distributions to such securities for so long as Distributions on such securities, including unpaid Distributions, remain unpaid.

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

"***Preferred Cap***" has the meaning specified in the definition of Alternative Payment Mechanism.

"***Preferred HITS***" has the meaning specified in Recital A.

"***Prospectus Supplement***" has the meaning specified in Recital B.

"***Qualifying Capital Securities***" means securities (other than Common Stock, rights to acquire Common Stock and securities convertible into Common Stock) that (a) qualify as Tier 1 capital of the Corporation under the capital guidelines of the Federal Reserve as then in effect and applicable to bank holding companies and (b) in the determination of the Corporation's Board of Directors, reasonably construing the definitions and other terms of this Replacement Capital Covenant, meet one of the following criteria:

(i) securities issued by the Corporation (including guarantees) or issued by its Subsidiaries that (1) rank*pari passu* with or junior to the Junior Subordinated Notes upon a liquidation, dissolution or winding up of the Corporation, (2) have no maturity or a maturity of at least 60 years, and (3) either (i) are Non-Cumulative and are subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Replacement Capital Covenant or (ii) have a Mandatory Trigger Provision, an Optional Deferral Provision and Intent-Based Replacement Disclosure; or

(ii) securities issued by the Corporation or its Subsidiaries that (1) rank*pari passu* with or junior to the Junior Subordinated Notes upon a liquidation, dissolution or winding up of the Corporation, (2) have no maturity or a maturity of at least 40 years, (3) are subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Replacement Capital Covenant, and (4) have a Mandatory Trigger Provision and Optional Deferral Provision.

It is acknowledged that the Federal Reserve has not approved as a Tier 1 capital instrument for bank holding companies securities containing a Mandatory Trigger Provision that otherwise would be Qualifying Capital Securities and, accordingly, these securities would not constitute Qualifying Capital Securities unless such approval is obtained.

"***Qualifying Non-Cumulative Perpetual Preferred Stock***" means non-cumulative preferred stock of the Corporation that ranks*pari passu* with or junior to all other preferred stock of the Corporation, is perpetual and is subject to either a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Replacement Capital Covenant or has a provision that prohibits us from making any distributions thereon upon our failure to satisfy one or more financial tests set forth therein and is subject to Intent-Based Replacement Disclosure, and in each case as to which the transaction documents provide for no remedies as a consequence of non-payment of Distributions other than Permitted Remedies.

"***Redesignation Date***" means, as to the Covered Debt in effect at any time, the earliest of (a) the date that is two years prior to the final maturity date of such Covered Debt, (b) if the Corporation elects to redeem, or the Corporation or a Subsidiary of the Corporation elects to repurchase, such Covered Debt either in whole or in part with the consequence that after giving effect to such redemption or repurchase the outstanding principal amount of such Covered Debt is less than $100,000,000, the applicable redemption or repurchase date and (c) if such Covered Debt is not Eligible Subordinated Debt of the Corporation, the date on which the Corporation issues long-term indebtedness for money borrowed that is Eligible Subordinated Debt.

"**REIT Preferred Securities**" means non-cumulative perpetual preferred stock of a Subsidiary of a Depository Institution Subsidiary, which may or may not be a "real estate investment trust" ("REIT") within the meaning of Section 856 of the Internal Revenue Code, that is exchangeable for non-cumulative perpetual preferred stock of the Corporation and satisfies the following requirements:

(a) such non-cumulative perpetual preferred stock of a Subsidiary of the Depositary Institution Subsidiary and the related non-cumulative perpetual preferred stock of the Corporation for which it may be exchanged qualifies as Tier 1 capital of a Depository Institution Subsidiary risk-based capital guidelines of the Appropriate Federal Banking Agency and related interpretive guidance of such Agency (for example, in the case of the Office of the Comptroller of the Currency, Corporate Decision 97-109);

(b) such non-cumulative perpetual preferred stock of a Subsidiary of the Depositary Institution Subsidiary must be exchangeable automatically into non-cumulative perpetual preferred stock of the Corporation in the event that the Appropriate Federal Banking Agency directs such Depository Institution Subsidiary in writing to make a conversion because such Depository Institution Subsidiary is (i) undercapitalized under the applicable prompt corrective action regulations (which, for example, in the case of the Office of the Comptroller of the Currency and applicable to national banks, are at 12 C.F.R. 6.4(b)), (ii) placed into conservatorship or receivership, or (iii) expected to become undercapitalized in the near term;

(c) if such Subsidiary of the Depositary Institution Subsidiary is a REIT, the transaction documents include provisions that would enable the REIT to stop paying Distributions on its non-cumulative perpetual preferred stock without causing the Subsidiary to fail to comply with the income distribution and other requirements of the Internal Revenue Code applicable to REITs;

(d) such non-cumulative perpetual preferred stock of the Corporation issued upon exchange for the non-cumulative perpetual preferred stock of a Subsidiary of a Depository Institution Subsidiary issued as part of such transaction ranks *pari passu* or junior to other preferred stock of the Corporation or a Depository Institution Subsidiary, as applicable; and

(e) such REIT Preferred Securities and non-cumulative perpetual preferred stock of the Corporation or Depository Institution Subsidiary for which it may be exchanged are subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Replacement Capital Covenant.

"***Replacement Capital Covenant***" has the meaning specified in the introduction to this instrument.

"***Replacement Capital Securities***" means

(a) Common Stock and rights to acquire Common Stock;

(b) Mandatorily Convertible Preferred Stock; and

(c) Qualifying Capital Securities.

"***Securities***" has the meaning specified in Recital A.

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

"***Shares"*** has the meaning specified in Recital A (and includes the "Depositary Shares" for the Shares referred to in the Prospectus Supplement.)

"***Stock Purchase Date***" has the meaning specified in Recital A.

"***Subsidiary***" means, at any time, any Person the shares of stock or other ownership interests of which having ordinary voting power to elect a majority of the board of directors or other managers of such Person are at the time owned, or the management or policies of which are otherwise at the time controlled, directly or indirectly through one or more intermediaries (including other Subsidiaries) or both, by another Person.

"***Termination Date***" has the meaning specified in Section 4(a).

"***Treasury HITS***" has the meaning specified in Recital A.